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**REDACTED – FOR PUBLIC INSPECTION**

June 8, 2017

***Hand Delivery and Electronic Filing***

Michelle Carey, Chief, Media Bureau  
Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th St. NW  
Washington, D.C. 20554

**RE: Complaint, *Word Network Operating Company, Inc. D/B/A The Word Network v. Comcast Corporation and Comcast Cable Communications, LLC***

Dear Ms. Carey and Ms. Dortch:

The Word Network submits the attached redacted version of its Complaint against Comcast Corporation and Comcast Cable Communications, LLC. The “{ }” symbols denote where confidential information has been redacted. The confidential version of this filing is being simultaneously filed with the Commission along with a request for confidentiality.

Please contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Markham C. Erickson', with a horizontal line extending to the right.

Markham C. Erickson  
*Counsel for The Word Network*

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
<b>WORD NETWORK OPERATING</b>	)	File No. CSR-____-P
<b>COMPANY, INC. D/B/A THE WORD</b>	)	
<b>NETWORK,</b>	)	
Complainant,	)	
	)	
v.	)	
	)	
<b>COMCAST CORPORATION</b>	)	
and	)	
<b>COMCAST CABLE COMMUNICATIONS,</b>	)	
<b>LLC,</b>	)	
Defendants.	)	

TO: Chief, Media Bureau

**COMPLAINT**

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June 8, 2017

**TABLE OF CONTENTS**

<b>INTRODUCTION.....</b>	<b>1</b>
<b>JURISDICTION AND STATEMENT OF FACTS .....</b>	<b>7</b>
<b>A.    Jurisdiction .....</b>	<b>7</b>
<b>B.    The Parties .....</b>	<b>8</b>
<b>1. The Word Network.....</b>	<b>8</b>
<b>2. Comcast.....</b>	<b>10</b>
<b>C.    Comcast’s Unlawful Conduct .....</b>	<b>13</b>
<b>I.    STATUTORY AND REGULATORY BACKGROUND.....</b>	<b>18</b>
<b>A.    Comcast-NBCU Order – Anti-Discrimination Condition.....</b>	<b>18</b>
<b>B.    Comcast-NBCU Order – Online Conditions.....</b>	<b>21</b>
<b>C.    Section 616 and Related Program Carriage Rules. ....</b>	<b>21</b>
<b>II.    COMCAST DISCRIMINATED AGAINST TWN ON THE BASIS OF AFFILIATION AND NON-AFFILIATION IN THE SELECTION, TERMS, AND CONDITIONS OF CARRIAGE IN VIOLATION OF THE COMCAST-NBCU ORDER.....</b>	<b>22</b>
<b>A.    TWN is a high-quality network that provides popular, original video programming that Comcast consumers desire.....</b>	<b>22</b>
<b>B.    There is no “legitimate business reason” for Comcast’s decision to reduce distribution of TWN. ....</b>	<b>25</b>
<b>C.    Comcast treats its affiliated networks better than TWN. ....</b>	<b>32</b>
<b>D.    Comcast unlawfully discriminated against TWN when it demanded certain of TWN’s digital rights.....</b>	<b>39</b>
<b>III.    COMCAST DEMANDED TWN’S DIGITAL RIGHTS IN VIOLATION OF THE COMCAST-NBCU ORDER .....</b>	<b>41</b>
<b>A.    Comcast Violated the Comcast-NBCU Order’s prohibition on entering into an arrangement that limits TWN’s ability to provide its video programming to OVDs. ....</b>	<b>41</b>

B.	Comcast violated the <i>Comcast-NBCU Order</i> 's prohibition on engaging in unfair methods of competition, acts or practices that significantly hinder TWN's ability to provide its video programming to subscribers. ....	42
IV.	COMCAST DEMANDED TWN'S DIGITAL RIGHTS IN VIOLATION OF SECTION 616 AND THE COMMISSION'S PROGRAM CARRIAGE RULES. ..	43
A.	Comcast demanded a financial interest in TWN. ....	43
B.	Section 616 forbids Comcast from requiring a financial interest in TWN as a prerequisite for carriage.....	43
C.	TWN has demonstrated a <i>prima facie</i> case of a financial interest violation..	45
	REQUEST FOR RELIEF .....	46

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<b>NETWORK,</b>	)	
Complainant,	)	
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v.	)	
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<b>COMCAST CORPORATION</b>	)	
and	)	
<b>COMCAST CABLE COMMUNICATIONS,</b>	)	
<b>LLC,</b>	)	
Defendants.	)	

TO: Chief, Media Bureau

**COMPLAINT**

**INTRODUCTION**

1. Comcast informed The Word Network (“TWN”) on November 11, 2016 in a two-sentence letter that it would drastically decrease carriage of TWN by eliminating it from 456 Comcast systems. Comcast had carried TWN since TWN’s inception in 2000. Comcast had never before intimated that it was anything but pleased with its relationship with TWN. Comcast’s decision was unilateral and unexpected. Further, the decision was not based on any legitimate business reason. When TWN asked for an explanation of the reasons for this

treatment, Comcast Cable's Senior Vice President of Content Acquisition simply responded:

"Because we are Comcast, and we can."<sup>1</sup>

2. Comcast's treatment of independent, unaffiliated TWN is precisely the behavior that concerned the Commission during its review of Comcast's acquisition of NBC Universal. To address findings of fact that Comcast would have the increased incentive and ability to discriminate against independent programmers, the Commission adopted behavioral remedies, including prohibiting Comcast from "discriminat[ing] in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection of, or terms or conditions for, carriage, including in decisions regarding tiering and channel placement."<sup>2</sup>

3. This non-discrimination condition operates independently of, and in addition to, Section 616 of the Communications Act of 1934, as amended ("Section 616"), and the Commission's program carriage rules. It is binding on Comcast until January 2018. To demonstrate a violation of this condition, TWN needs to demonstrate only that "it was discriminated against on the basis of its affiliation or non-affiliation."<sup>3</sup> TWN does not need to show that "it was unreasonably restrained from competing."<sup>4</sup> Nor does TWN need to establish a *prima facie* case of Comcast's violation of this condition.<sup>5</sup>

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<sup>1</sup> Declaration of Kevin Adell ¶ 25 ("Adell Decl."), attached as Exhibit 1.

<sup>2</sup> Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion and Order*, 26 FCC Rcd. 4238, 4287 ¶ 121 (2011) ("*Comcast-NBCU Order*" or "*Order*"). The Commission also required Comcast to: (1) include all independent news and business news channels in any news and business news channel neighborhoods that Comcast may establish; and (2) add ten new independently owned-and-operated channels to its digital (D1) tier. *See id.* at 4358, Appendix A, Conditions III(2) and III(3).

<sup>3</sup> *Id.* at 4287 ¶ 121.

<sup>4</sup> *Id.*

<sup>5</sup> While section 76.1302 of the Commission's rules serves as the general framework for complaining about a violation of the *Order*'s non-discrimination condition, the *prima facie* case

4. Comcast violated the *Comcast-NBCU Order*'s non-discrimination provision in two ways. First, it slashed distribution of TWN—the leading network in its genre—without a valid business justification. In contrast, Comcast increased the distribution and per-subscriber payments to networks Comcast owns—even for those networks that perform poorly in their respective genres. This disparity in treatment would not have occurred but for the fact that TWN is not affiliated with Comcast while those poorly performing networks are owned by Comcast. Second, Comcast demanded rights to TWN's digital distribution in order for TWN to avoid having TWN's carriage cut in half. Such an interest, if granted, would create an affiliation between TWN and Comcast. In short, Comcast's actions patently violated the *Comcast-NBCU Order*'s prohibition on making carriage decisions based on affiliation or nonaffiliation with Comcast.

5. TWN is the largest African American religious network in the world. It is the leading network in the genre of African American religious programming, and consequently, it is a desirable network. It provides high-quality, original ministry programming to tens of millions of consumers in the United States. Since its founding in 2000, TWN has been continually carried by Comcast. Over this time, TWN improved the quality of its content and distribution systems. Its distribution by DIRECTV, AT&T, Spectrum/Charter (Charter, Time Warner Cable, Bright House), and Verizon on a percentage basis exceeds the distribution now provided by Comcast.<sup>6</sup>

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requirement of section 76.1302(d) applies only to complaints brought under section 76.1301 of the Commission's program carriage rules; it does not apply to complaints for violation of the *Comcast-NBCU Order*. See 47 C.F.R. § 76.1302(d).

<sup>6</sup> Comcast currently distributes TWN to approximately a quarter of its subscribers. Prior to its November 2016 reduction decision, Comcast distributed TWN to over half of its subscribers. Adell Decl. ¶ 18. DIRECTV, AT&T, and Verizon, on the other hand, each distribute TWN to { } of their subscribers, while Spectrum/Charter distributes TWN to approximately { }.

6. Comcast's discrimination lacks a legitimate business reason. Comcast benefits from the broad distribution of TWN, and it did not realize any economic benefit from reducing the distribution of TWN. Comcast does not pay TWN any subscriber fee to distribute TWN, and in fact receives payment from TWN for transport. Comcast also benefits from payments from loyal viewers that subscribe to an expanded tier to access TWN, and from the increased value that TWN's desirable programming brings to this expanded tier. From an economic perspective, Comcast would benefit from increased carriage of TWN, not decreased carriage.

7. Comcast replaced TWN with the Impact Network, an objectively inferior network. Comcast does not derive any benefit from replacing TWN with the Impact Network, because, among other things, TWN provides superior programming to the Impact Network. TWN provides higher quality video programming than the Impact Network, and it also provides a higher quality video feed and better viewer experience than does the Impact Network. Rather than a dedicated satellite feed, the Impact Network appears to provide its feed through the Internet, which results in poor video quality and consequently a poor viewing experience for subscribers.

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of its subscribers. *See Operator Subscribers by Geography*, SNL Kagan, <https://www.snl.com/SNLWebPlatform/Content/SNLReporting/SNLReportingApp.aspx?ReportID=f3c5f1a5-6d6a-4bbb-8ccc-f3a3d8567c9f> (last visited June 6, 2017) ("TWN Subscribers By MVPD"); *Package Subscribers by Network*, SNL Kagan, <https://www.snl.com/SNLWebPlatform/Content/SNLReporting/SNLReportingApp.aspx?ReportID=d9786a72-097c-4d55-bd73-e363cef469b8> (last visited June 6, 2017) (Set "Operator" to "AT&T, Bright House Networks, Charter Communications Inc., DIRECTV, Time Warner Cable Inc. and Verizon Communications," and "Headend Type" to "Cable, Digital Broadcast Satellite, and Telco," and "Carried Network" to "The Word Network") (last visited June 6, 2017) ("Total Subscribers Per MVPD"). These percentages were calculated for each MVPD by dividing the reported number of subscribers on the headend carrying TWN by the overall number of subscribers reported by SNL Kagan for that MVPD. This headend subscriber data is the best available SNL data on TWN's subscribership by MVPD.



8. Further, Comcast failed to negotiate in good-faith with TWN prior to slashing TWN's distribution. Comcast informed TWN of its decision in a two-sentence letter, without any prior notice that Comcast was contemplating any reduction in distribution. Nor did it give TWN a meaningful opportunity to discuss or negotiate mutually acceptable terms. Comcast did not provide, or appear to engage in, any cost-benefit analysis of the decision. It does not appear that it performed even basic market research to understand this genre of programming. This was especially evident when prominent members of the African American community and others offered to meet with Comcast to discuss TWN's standing in the African American community and its prominence among African American religious leaders.<sup>7</sup>

9. In contrast, Comcast treats affiliated networks, even those that are not leading networks in their genres, better than TWN. Comcast pays each of its affiliated networks a per-subscriber fee, even when an affiliated network's performance does not merit such fees. Comcast also distributes all but a couple of its affiliated networks more broadly than TWN. Consistently and demonstrably, Comcast gives special and favorable treatment to its affiliate networks, even in the face of decreasing ratings. Comcast treats affiliated networks "like siblings as opposed to like strangers" and gives them a "different level of scrutiny" than unaffiliated providers.<sup>8</sup> This "sibling relationship" with its affiliated networks "probably [affords those companies] greater access."<sup>9</sup>

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<sup>7</sup> Declaration of Bishop Charles H. Ellis, III ¶¶ 18-25 ("Ellis Decl."), attached as Exhibit 2.

<sup>8</sup> *Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, *Initial Decision of Chief Administrative Law Judge Richard L. Sippel*, 26 FCC Rcd. 17160, 17186 ¶ 55 (2011) (citing testimony of Steven Burke, then President of Comcast Cable and COO of Comcast Corporation) ("*Tennis Channel ALJ Decision*"), *rev'd on other grounds*, 30 FCC Rcd. 849 (2015).

<sup>9</sup> *Id.* (citing testimony of Madison Bond, the Comcast executive responsible for distribution decisions).

10. In sum, Comcast slashed distribution of TWN—the most popular network in its genre—while it has increased distribution and per-subscriber fees of affiliated networks that failed to perform and were not among ratings leaders in their respective genres. The only reason for the disparate treatment among the networks is whether they are affiliated with Comcast.

11. Comcast also violated the non-discrimination condition when it refused to negotiate with TWN for the reversal of its decision to slash TWN’s distribution unless TWN granted Comcast certain digital rights, which, if granted, would create an affiliation between Comcast and TWN. These digital rights have substantial and growing value.<sup>10</sup> Giving exclusive rights as Comcast insisted would damage, if not entirely foreclose, TWN’s online presence and make it more difficult to maintain and expand video programming with other MVPDs.<sup>11</sup> The value of these rights is such that they could constitute an attributable interest to Comcast.<sup>12</sup>

12. Comcast’s demand for TWN’s digital rights also constitutes a violation of other *Comcast-NBCU Order* conditions. First, Comcast refused to negotiate with TWN for distribution on Comcast’s linear service unless TWN surrendered certain digital rights. This constitutes an arrangement that limits TWN’s ability to provide its video programming to OVDs, including OVDs that compete with Comcast, in violation of Condition IV(B)(3). Second, such conduct is an unfair act that significantly hinders TWN’s ability to provide its video programming to subscribers online, in violation of Condition IV(G)(1)(a). Granting Comcast

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<sup>10</sup> See Expert Report of Harold W. Furchtgott-Roth ¶ 24 (“Furchtgott-Roth Report”), attached as Exhibit 3.

<sup>11</sup> *Id.* ¶ 27.

<sup>12</sup> *Id.* ¶ 30.

exclusive digital rights, for example, would entirely prohibit TWN from continuing its thriving digital distribution service to consumers throughout the world via its website.

13. Comcast's refusal to negotiate with TWN unless TWN granted Comcast certain online digital rights also constitutes an unlawful demand for a financial interest in TWN in violation of Section 616 and the Commission's program carriage rules.

## JURISDICTION AND STATEMENT OF FACTS

### A. Jurisdiction

14. The Commission has jurisdiction over complaints by video programming vendors alleging that Comcast violated the *Comcast-NBCU Order*'s non-discrimination condition.<sup>13</sup> Such complaints must be submitted in accordance with the rules in 47 C.F.R. § 76.1302.<sup>14</sup> The Commission also has jurisdiction to enforce remedial conditions adopted pursuant to its authority to review the transfer of FCC licenses, including the *Comcast-NBCU Order* conditions that prohibit Comcast from demanding TWN's digital rights.<sup>15</sup>

15. The Commission additionally has jurisdiction over program carriage disputes under Section 616.<sup>16</sup> The FCC exercises this jurisdiction through its program carriage rules.<sup>17</sup>

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<sup>13</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4359, Appendix A, Condition III(4).

<sup>14</sup> *Id.* Section 76.1302 does not require TWN to make a *prima facie* case of a violation of the *Comcast-NBCU Order*'s non-discrimination condition. The *prima facie* case requirement of section 76.1302 applies only to complaints of a violation of section 76.1301 of the Commission's rules. See 47 C.F.R. § 76.1302(d) ("In order to establish a *prima facie* case of a violation of § 76.1301, the complaint must contain evidence of the following..."). Here, TWN brings its discrimination claim under the *Comcast-NBCU Order*'s separate and independent non-discrimination prohibition, not section 76.1301. See *Comcast-NBCU Order*, 26 FCC Rcd. at 4287 ¶ 121.

<sup>15</sup> See 47 U.S.C. § 310(d).

<sup>16</sup> 47 U.S.C. § 536.

<sup>17</sup> 47 C.F.R. §§ 76.1300-76.1302.

16. On February 6, 2017, Mr. Kevin Adell, President and CEO of TWN, provided written notice to Comcast of TWN's intent to file a complaint, as required by 47 C.F.R. § 76.1302(b). A copy of this pre-filing notice is attached as Exhibit 5. Comcast's February 16, 2017 response to this letter is attached as Exhibit 6.

17. TWN provided a subsequent notification letter to Comcast on May 19, 2017. This letter is attached as Exhibit 7. Comcast's May 26, 2017 response is attached as Exhibit 8.

18. This complaint is timely filed within one year of Comcast's removal of TWN on 456 systems and TWN's notification to Comcast of its intent to bring this complaint.<sup>18</sup>

**B. The Parties**

**1. The Word Network**

19. TWN is a video programming vendor, as defined in the *Comcast-NBCU Order*, Section 616(b) of the Communications Act, and 47 C.F.R. § 76.1300(e).<sup>19</sup> Its mailing address is 20733 West 10 Mile Rd., Southfield, MI 48075, and its phone number is (855)730-9673.

20. Launched in February of 2000, TWN provides original, African American-oriented ministry programming.<sup>20</sup> Comcast has distributed TWN since shortly after its

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<sup>18</sup> See 47 C.F.R. § 76.1302(h).

<sup>19</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4358, Appendix A, Condition I; 47 U.S.C. § 536(b); 47 C.F.R. § 76.1300(e) (“‘[V]ideo programming vendor’ means a person engaged in the production, creation, or wholesale distribution of video programming for sale.”).

<sup>20</sup> Adell Decl. ¶ 3.

launch.<sup>21</sup> TWN also is distributed by DIRECTV, AT&T, Spectrum/Charter, Verizon, Cox, Cablevision, CenturyLink, Suddenlink, and other MVPDs.<sup>22</sup>

21. TWN is independently owned and operated.<sup>23</sup> It is unaffiliated with any MVPD or other video programming vendor.<sup>24</sup> As the largest African American religious network in the world, TWN reaches millions of viewers who rely on TWN for both spiritual edification and life-improvement programming.<sup>25</sup> For many of these consumers, such as the elderly who are unable to leave their homes to attend services in person, TWN serves as a critical means to access African American-oriented ministry programming.<sup>26</sup>

22. TWN's popularity is fueled by the high-quality ministry programming it provides. Throughout its seventeen-year existence, TWN has substantially and continuously improved the quality of its programming, production, and distribution systems.<sup>27</sup> Such improvements have transformed TWN into a top-tier religious programming network, unparalleled by any other religious network targeting African Americans.<sup>28</sup> Today, TWN features many of the nation's most popular preachers, who have congregations in the hundreds of thousands.<sup>29</sup> Many of these preachers, such as Bishop Charles Ellis III, make their programming available only through TWN.<sup>30</sup>

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<sup>21</sup> *Id.* ¶ 5.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* ¶ 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* ¶¶ 3, 6.

<sup>26</sup> *Id.* ¶ 11.

<sup>27</sup> *Id.* ¶ 4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* ¶ 6; Ellis Decl. ¶ 7.

<sup>30</sup> Adell Decl. ¶ 6.

23. TWN has a substantial audience and its popularity is increasing, growing its audience size.<sup>31</sup> In a period where other religious networks lost viewers at a rate of {REDACTED}, TWN increased viewers between {REDACTED} and {REDACTED}.<sup>32</sup> By 2016, MVPDs distributed TWN to tens of millions of subscribers in the United States and hundreds of millions of subscribers worldwide.<sup>33</sup> Comcast distributed TWN to approximately 12 million subscribers on its expanded basic tier.<sup>34</sup>

24. TWN additionally has made its programming available through its website, which has been available since August 2013, and a smart phone app.<sup>35</sup> Online viewership not only substantially expands the potential viewership of TWN but also makes the branding of TWN more valuable to MVPDs such as Comcast seeking to attract and retain customers with well-branded networks.<sup>36</sup>

## 2. Comcast

25. Comcast (comprising Comcast Corporation and Comcast Cable Communications, LLC, among others) is a cable operator and a multichannel video programming distributor (“MVPD”) within the meaning of the *Comcast-NBCU Order*, Section 602(13) of the Communications Act, and 47 C.F.R. § 76.1300(d).<sup>37</sup> Its mailing address is

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<sup>31</sup> See Expert Report of Mark R. Fratrik and William Redpath ¶¶ 10-11 (“Fratrik and Redpath Report”), attached as Exhibit 4.

<sup>32</sup> *Id.* ¶ 11.

<sup>33</sup> Adell Decl. ¶ 3.

<sup>34</sup> *Id.* ¶ 16.

<sup>35</sup> *Id.* ¶ 8.

<sup>36</sup> Furchtgott-Roth Report ¶ 23.

<sup>37</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4357, Appendix A, Condition I; 47 U.S.C. § 522(13); 47 C.F.R. § 76.1300(d).

Comcast Center, 1701 JFK Boulevard, Philadelphia, PA 19103 and its phone number is (215) 286-1700.

26. Comcast is the nation's largest cable operator, with more than 22 million video subscribers across the United States, as well as one of the nation's largest broadband Internet providers.<sup>38</sup> Comcast serves customers in 40 states and the District of Columbia.<sup>39</sup> Comcast is the dominant MVPD in many of the markets it serves. In Philadelphia, for example, Comcast serves almost 70% of MVPD subscribers.<sup>40</sup> In such markets, Comcast customers have few alternative options. Cable networks, in turn, must obtain carriage by Comcast in those markets to survive. Indeed, "[i]f an aspiring cable channel cannot win carriage on [Comcast and Time Warner], its fate is sealed. It's doomed."<sup>41</sup>

27. Comcast also is a vertically integrated content provider, owning the national NBC and Telemundo broadcast networks, 16 national cable networks, and 15 regional sports and news networks.<sup>42</sup> These networks include Bravo, E!, the Golf Channel, NBC Universo, the Olympic Channel, Oxygen Network, Sprout, Syfy, USA, and numerous Comcast regional sports networks.<sup>43</sup>

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<sup>38</sup> Comcast, Form 10-K Annual Report for 2016 (Feb. 3, 2017), <http://files.shareholder.com/downloads/CMCSA/3747116470x0xS1193125-17-30512/902739/filing.pdf> ("Comcast 2016 Form 10-K").

<sup>39</sup> *Xfinity from Comcast Availability*, Providers by Zip, <http://providersbyzip.com/xfinity-availability> (last visited May 31, 2017).

<sup>40</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4285 ¶ 116.

<sup>41</sup> Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., et al., *Memorandum Opinion and Order*, 21 FCC Rcd. 8203, 8367 (2006) (Dissenting Statement of Commissioner Michael J. Copps).

<sup>42</sup> See *NBCUniversal*, Comcast, <http://corporate.comcast.com/our-company/businesses/nbcuniversal#accordion-0> (last visited June 1, 2017).

<sup>43</sup> See *NBCUniversal*, <http://www.nbcuniversal.com/business> (last visited June 1, 2017).

28. Comcast’s control over these cable networks and their substantial video programming content, in addition to its dominant market position in distributing such programming content both offline and online, creates strong incentives for Comcast to discriminate in favor of its affiliated networks by giving them preferential treatment unavailable to unaffiliated programmers.<sup>44</sup> These incentives are well-established, having been noted by both the FCC and DOJ.<sup>45</sup> Ultimately, it was these incentives that served as the basis for the adoption of the *Comcast-NBCU Order*’s non-discrimination condition.

29. These incentives have manifested in ways well beyond Comcast’s discrimination against TWN. Comcast has been subject to repeated complaints by unaffiliated video programmers, which each alleged unlawful discrimination on the basis of affiliation and other violations of law.<sup>46</sup> Such complaints have been so prevalent, in fact, that Comcast felt it necessary to alert shareholders that it may be subject to future complaints.<sup>47</sup>

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<sup>44</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4285 ¶ 118.

<sup>45</sup> *Id.* at 4358, Appendix A, Condition III(1); *U.S. et al. v. Comcast Corp., et al.*, Modified Final Judgment, Case No. 11-CV-00106, at 19 (§ V.A(1)), filed Aug. 21, 2013, <https://www.justice.gov/atr/case-document/file/492176/download>.

<sup>46</sup> See Program Carriage Complaint of Liberman Broadcasting, Inc. and LBI Media, Inc., MB Docket No. 16-121, File No. CSR-8922-P (filed Apr. 8, 2016) (“Liberman Program Carriage Complaint”); Complaint of Bloomberg, L.P., MB Docket No. 11-104 (filed June 13, 2011) (“Bloomberg Complaint”); Program Carriage Complaint of The Tennis Channel, Inc., MB Docket No. 10-204, File No. CSR-8258-P (filed Jan. 5, 2010) (“Tennis Channel Program Carriage Complaint”); Carriage Agreement Complaint of Herring Broadcasting, Inc. d/b/a WealthTV, MB Docket No. 08-214, File No. 7907-P (filed Oct. 15, 2008) (“WealthTV Carriage Agreement Complaint”); Carriage Agreement Complaint of TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network, MB Docket No. 08-214, File No. 8001-P (filed Aug. 7, 2008) (“MASN Carriage Agreement Complaint”); Program Carriage Complaint of NFL Enterprises LLC, MB Docket No. 08-214, File No. CSR-7876-P (filed May 6, 2008) (“NFL Program Carriage Complaint”).

<sup>47</sup> Comcast 2016 Form 10-K at 15 (“We have been involved in program carriage disputes at the FCC and may be subject to new complaints in the future”).



30. Comcast's discriminatory behavior in favor of its affiliated programming can be seen in its treatment of the Oxygen Network and NBC Universo. For both networks, Comcast increased distribution even as other MVPDs decreased distribution, or Comcast increased distribution even as ratings were falling, or both.<sup>48</sup>

### C. Comcast's Unlawful Conduct

31. On November 11, 2016, Jennifer Gaiski, Senior Vice President of Content Acquisition for Comcast Cable, notified TWN in a two-sentence letter of Comcast's intent to eliminate distribution of TWN on 456 Comcast systems, which would reduce TWN's distribution on Comcast from approximately 12 million to 5 million subscribers.<sup>49</sup> Eliminated systems included key African American markets for TWN such as Washington, D.C., Philadelphia, and Baltimore, as well as major metropolitan areas such as Pittsburgh, Houston, Salt Lake City, San Francisco/Oakland, Denver, Boston, and Minneapolis/St. Paul.<sup>50</sup> These cuts went into effect on or about January 12, 2017.<sup>51</sup> TWN later learned that it would be replaced on each system by the Impact Network, which also features African American ministry programming.<sup>52</sup>

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<sup>48</sup> Fratrik and Redpath Report ¶¶ 13-18.

<sup>49</sup> Letter from Jennifer Gaiski, Senior Vice President of Content Acquisition, Comcast Cable Communications, to Kevin Adell, President and CEO, The Word Network, at 1 (Nov. 11, 2016), attached as Exhibit 9.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Adell Decl. ¶ 16. The Impact Network is an African American religious network owned by Bishop Wayne T. Jackson. Bishop Wayne T. Jackson gained some attention by hosting then-candidate Donald Trump to Bishop Wayne T. Jackson's church to speak. *See* Niraj Warikoo, *Detroit Bishop Who Hosted Trump Will Join His Swearing-In Ceremony*, Detroit Free Press (Dec. 29, 2016), <http://www.freep.com/story/news/local/michigan/detroit/2016/12/28/detroit-bishop-take-part-trumps-swearing--ceremony/95933138/>.

32. Ms. Gaiki's letter failed to provide TWN with any substantive explanation for Comcast's decision, and it came without any prior warning of Comcast's decision. Comcast made no meaningful effort to negotiate or renegotiate the terms of TWN's distribution, express any concern to TWN that it viewed its programming as anything other than excellent, or seek any input from any TWN programmer or other person who understands the African American-oriented religious programming marketplace.<sup>53</sup>

33. After repeated requests by TWN, Comcast agreed to meet in person with TWN at Comcast's Philadelphia headquarters.<sup>54</sup> This meeting occurred on November 22, 2016 between Mr. Adell, John Mattiello, Director of Marketing and Affiliate Relations for TWN, and Ms. Gaiki and her team.<sup>55</sup> It appeared that Ms. Gaiki and her team had not prepared for this meeting.<sup>56</sup> They lacked familiarity with TWN, the African American ministry programming genre, and the audience that watches such programming.<sup>57</sup>

34. During this meeting, TWN described the types of content TWN provides, how TWN benefits the African American community, how it benefits Comcast and other MVPDs, its prominence in the African American religious community, and why TWN's viewers are loyal.<sup>58</sup> Ms. Gaiki's lack of familiarity with the marketplace was underscored by her condescending reaction to TWN's presentation. She stated that she could not tell TWN apart from other religious networks.<sup>59</sup> And during a video portion of the presentation featuring a

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<sup>53</sup> Adell Decl. ¶¶ 21, 27-28, 31.

<sup>54</sup> *Id.* ¶ 26.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* ¶ 27.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* ¶ 28.

<sup>59</sup> *Id.*

Pentecostal African American funeral ceremony, she laughed and pointed at the screen while exclaiming: “Look at them dance! Look at them dance!”<sup>60</sup>

35. When pressed for an explanation for Comcast’s decision, Ms. Gaiki eventually said that TWN did not perform as well as it should.<sup>61</sup> Ms. Gaiki refused, however, to discuss how Comcast measured its performance or the specific markets where TWN supposedly did not adequately perform.<sup>62</sup> To this day, Comcast has not presented TWN with any evidence supporting this claim.<sup>63</sup> When TWN offered to engage in advertising and promotions and to undertake other efforts to improve TWN’s brand of programming, Ms. Gaiki expressed no interest, demonstrating that TWN’s performance was actually irrelevant to the decision to reduce TWN’s distribution.<sup>64</sup>

36. At this same meeting, Comcast demanded a financial interest in TWN by demanding TWN’s digital rights. Instead of engaging with Mr. Adell during his attempts to negotiate a revocation of Ms. Gaiki’s letter, Ms. Gaiki instead inquired about TWN’s online distribution rights, an unrelated matter in which Comcast had not previously expressed interest.<sup>65</sup> Mr. Adell responded that TWN streams its content through TWN’s website and does not license it to any distributor.<sup>66</sup> Comcast informed TWN that its policy is to not carry a video programming vendor unless the video programming vendor grants Comcast its digital rights.<sup>67</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* ¶ 29.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* ¶¶ 30-31.

<sup>65</sup> *Id.* ¶ 32.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* ¶ 35.

TWN reiterated that it would not part with its exclusive worldwide rights, as TWN uses them as part of its business model.<sup>68</sup> In response, Comcast refused to negotiate any further, making it obvious that negotiations would not proceed until TWN agreed to grant Comcast its online digital rights.<sup>69</sup>

37. Parallel efforts by TWN ministry programmers to engage Comcast regarding the merits of the decision to reduce TWN's distribution were met with a similar lack of interest. One of the more popular preachers featured on TWN, Bishop Charles Ellis III, attempted to contact Ms. Gaiki after he was notified of Comcast's decision to reduce distribution of TWN.<sup>70</sup>

38. Ms. Gaiki never responded to Bishop Ellis.<sup>71</sup> Instead, Antonio Williams, a director in Comcast's government affairs department with no authority to make programming decisions, returned his call.<sup>72</sup> When asked by Bishop Ellis why Comcast was replacing TWN distribution on the 456 systems with the Impact Network, Mr. Williams responded that TWN had not been a good partner for Comcast.<sup>73</sup> He claimed that TWN's programming was mediocre, and that Mr. Adell had not visited Comcast's headquarters.<sup>74</sup> Mr. Williams further stated that Comcast believed replacing TWN with the Impact Network on these systems would give the

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Ellis Decl. ¶ 20.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* ¶ 21.

<sup>73</sup> *Id.* ¶ 22.

<sup>74</sup> *Id.*

African American community more options, and that the Impact Network was improving, while TWN was declining.<sup>75</sup>

39. These excuses were post hoc and unconvincing. In the seventeen-year relationship between Comcast and TWN, Comcast never expressed a desire that Mr. Adell visit Comcast's headquarters.<sup>76</sup> Further, TWN is an objectively superior network to the Impact Network. TWN, for example, charges {REDACTED} to {REDACTED} for a half-hour time slot, while the Impact Network charges {REDACTED} {REDACTED}.<sup>77</sup> Mr. Williams could not personally speak to the quality of TWN, nor the Impact Network. At the time of this conversation, he said he had never watched either channel.<sup>78</sup>

40. Subsequently, a call occurred, which included Mr. Williams, Bishop Ellis, Reverend Jesse Jackson, Sr., and Bishop Paul Morton, on a date prior to Christmas 2016.<sup>79</sup> The congregations for each participating minister constitute some of the largest African American congregations in the country. Mr. Williams was the only Comcast representative on the call.<sup>80</sup>

41. During the call, the ministers explained to Mr. Williams the harm to African American ministers that directly stemmed from Comcast's decision to reduce TWN's distribution.<sup>81</sup> They described TWN's prominence in the African American religious community, and its status as the leading network for African American religious programming.<sup>82</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> Adell Decl. ¶ 36.

<sup>77</sup> Ellis Decl. ¶ 17; Adell Decl. ¶ 12.

<sup>78</sup> Ellis Decl. ¶ 21.

<sup>79</sup> *Id.* ¶ 24.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* ¶ 25.

<sup>82</sup> *Id.*

The call concluded with Mr. Williams agreeing to relay the expressed concerns to his superiors at Comcast.<sup>83</sup> However, no minister on the call has since heard back from Mr. Williams.<sup>84</sup> On or around January 12, 2017, Comcast eliminated distribution of TWN on each of the 456 systems identified in Ms. Gaiki's November 11 letter and replaced TWN with the Impact Network.<sup>85</sup>

## LEGAL STANDARD

### I. STATUTORY AND REGULATORY BACKGROUND

#### A. *Comcast-NBCU Order* – Anti-Discrimination Condition.

42. The *Comcast-NBCU Order* provides TWN with an important remedy against discrimination by Comcast. A video programming vendor bringing a complaint under the *Comcast-NBCU Order*'s non-discrimination condition (or "merger non-discrimination condition") need show only "that it was discriminated against on the basis of its affiliation or non-affiliation."<sup>86</sup>

43. The merger non-discrimination condition provides video programming vendors with a remedy independent of, and in addition to Section 616, and the Commission's program carriage rules. Indeed, the Commission was clear and direct: this condition is "binding

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Adell Decl. ¶ 16.

<sup>86</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4282, 4287 ¶¶ 110, 121; *id.* at 4358, Appendix A, Condition III(1) ("Comcast shall not discriminate in Video Programming distribution on the basis of affiliation or non-affiliation of a Video Programming Vendor in the selection, price, terms or conditions of carriage (including but not limited to on the basis of channel or search result placement).")

on Comcast independent of the Commission's rules."<sup>87</sup> It is binding on Comcast until January 2018.<sup>88</sup>

44. Because the Commission found that Comcast "may have in the past discriminated in program access and carriage of affiliated networks for anticompetitive reasons"<sup>89</sup> and that Comcast's acquisition of NBCU "will result in an entity with increased ability and incentive to harm competition in video programming by engaging in foreclosure strategies or other discriminatory actions against unaffiliated video programming networks,"<sup>90</sup> the stand-alone non-discrimination condition does not require the same showing as the separate program carriage rules adopted under Section 616. A video programming vendor complaining of a violation of the merger non-discrimination condition needs only show "that it was discriminated against on the basis of its affiliation or non-affiliation."<sup>91</sup> Unlike a complaint under the program carriage rules, a video programming vendor bringing a complaint under the merger non-discrimination condition does not need to make a *prima facie* case to the Media Bureau. The merger non-discrimination condition specifically applies section 76.1302 of the Commission's rules.<sup>92</sup> These rules require that a *prima facie* case be made only for complaints

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<sup>87</sup> *Id.* at 4287 ¶ 121.

<sup>88</sup> *Id.* at 4359, Appendix A, Condition XX. Comcast, by consummating its acquisition of NBCU, agreed to be bound by each applicable condition. The time for challenging the legality of any *Comcast-NBCU Order* condition has long passed.

<sup>89</sup> *Id.* at 4285 ¶ 117.

<sup>90</sup> *Id.* at 4284 ¶ 116.

<sup>91</sup> *Id.* at 4282, 4287 ¶¶ 110, 121; *id.* at 4358, Appendix A, Condition III(1) ("Comcast shall not discriminate in Video Programming distribution on the basis of affiliation or non-affiliation of a Video Programming Vendor in the selection, price, terms or conditions of carriage (including but not limited to on the basis of channel or search result placement).").

<sup>92</sup> *Id.* at 4359, Appendix A, Condition III(4).

of a violation of the prohibited practices in 47 C.F.R. § 76.1301.<sup>93</sup> Here, TWN brings a complaint under the independent merger non-discrimination condition, not the non-discrimination prohibition under the program carriage rules promulgated in 47 C.F.R. § 76.1301.<sup>94</sup>

45. In addition, the merger non-discrimination condition does not require TWN to show that Comcast's actions unreasonably restrained TWN from competing.<sup>95</sup>

46. The Commission found that the merger's non-discrimination remedy was necessary to address concerns existing from the transaction's "unprecedented" aggregation of video programming content with the control over the means of distributing such programming content both offline and online.<sup>96</sup> It found that Comcast would have an increased incentive to discriminate in favor of its affiliated programming<sup>97</sup> and engage in "foreclosure strategies or other discriminatory actions against unaffiliated video programming networks."<sup>98</sup> The Commission further noted that such a condition helps alleviate its concerns regarding its mandate

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<sup>93</sup> See 47 C.F.R. § 76.1302(d) ("In order to establish a *prima facie* case of a violation of § 76.1301, the complaint must contain evidence of the following...").

<sup>94</sup> The *Comcast-NBCU Order* contains no language suggesting any intent to override this plain language, nor otherwise suggests the existence of any *prima facie* requirement for complaints like TWN's that allege a violation of the non-discrimination condition. Nonetheless, the declarations included with this complaint provide sufficient evidence to demonstrate a *prima facie* case of Comcast's unlawful discrimination against TWN in favor of its affiliated cable networks.

<sup>95</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4287 ¶ 121 ("A vendor proceeding under the [merger non-discrimination condition] will not need to also prove that it was unreasonably restrained from competing, as it would under our program carriage rules."). Notwithstanding, Comcast's discrimination harmed TWN. See Adell Decl. ¶¶ 23, 37; Fratrik and Redpath Report ¶¶ 19-22.

<sup>96</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4240 ¶ 3.

<sup>97</sup> *Id.* at 4285 ¶ 118.

<sup>98</sup> *Id.* at 4284 ¶ 116.



to promote diversity in video programming distribution.<sup>99</sup> And as an independent video programming vendor featuring diverse, African American-oriented religious programming, TWN is a paradigmatic example of the type of programmer the Commission anticipated requiring protection. Comcast's preferential treatment of its affiliated programmers constitutes a violation of this condition.

**B. Comcast-NBCU Order – Online Conditions.**

47. The *Comcast-NBCU Order* also prohibits Comcast from making certain demands for TWN's digital rights. First, Comcast is not permitted to "enter into or enforce any agreement or arrangement for carriage on Comcast's MVPD system that forbids, limits, or creates incentives to limit a broadcast network or cable programmer's provision of its Video Programming to one or more OVDs."<sup>100</sup> Second, Comcast may not "engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any MVPD or OVD from providing Video Programming online to subscribers or consumers."<sup>101</sup> By refusing to negotiate with TWN unless it relinquished certain digital rights, Comcast violated both of these prohibitions.

**C. Section 616 and Related Program Carriage Rules.**

48. Section 616 and the program carriage rules provide an additional remedy to Comcast's unlawful actions. No MVPD may "require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems."<sup>102</sup> A *prima facie* case of a violation of 47 C.F.R. § 76.1301(a) can be shown through documentary or

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<sup>99</sup> *Id.* at 4240 ¶ 3 ("[T]he transaction presents concerns with respect to our statutory mandate to promote diversity and localism in broadcast television and video programming distribution.").

<sup>100</sup> *Id.* at 4361, Appendix A, Condition IV(B)(3).

<sup>101</sup> *Id.* at 4361, Appendix A, Condition IV(G)(1)(a).

<sup>102</sup> 47 C.F.R. § 76.1301(a).

testimonial evidence supporting the claim that the MVPD “required a financial interest in any program service as a condition of carriage on one or more of [its] systems.”<sup>103</sup> “Financial interests” extend beyond just “equity interest,” and include licensing rights.<sup>104</sup> Digital rights, which are distinct from basic linear rights,<sup>105</sup> represent a substantial share of the value of a programmer and therefore constitute a financial interest.<sup>106</sup>

## **II. COMCAST DISCRIMINATED AGAINST TWN ON THE BASIS OF AFFILIATION AND NON-AFFILIATION IN THE SELECTION, TERMS, AND CONDITIONS OF CARRIAGE IN VIOLATION OF THE *COMCAST-NBCU ORDER***

### **A. TWN is a high-quality network that provides popular, original video programming that Comcast consumers desire.**

49. TWN is the largest African American religious network in the world.<sup>107</sup> It is distributed to tens of millions of consumers throughout the United States and to hundreds of millions throughout the world.<sup>108</sup> TWN was founded in February of 2000 by Kevin Adell and his father, the late Franklin Z. Adell.<sup>109</sup> The network is the preeminent network of choice for African American religious programming.<sup>110</sup> Its audience is larger than any other African

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<sup>103</sup> 47 C.F.R. § 76.1302(d)(3)(i).

<sup>104</sup> Herring Broadcasting, Inc. d/b/a WealthTV, NFL Enterprises LLC, TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Comcast Corp., *Memorandum Opinion and Hearing Designation Order*, 23 FCC Rcd. 14787, 14828-29 ¶¶ 88-89 (2008) (“*WealthTV/NFL/MASN HDO*”).

<sup>105</sup> See Liberman Broadcasting, Inc. and LBI Media, Inc. Reply to Answer to Program Carriage Complaint, MB Docket No. 16-121, File No. CSR-8922-P, at 12 ¶ 23 (filed June 27, 2016) (“Liberman Reply to Answer to Program Carriage Complaint”).

<sup>106</sup> See Furchtgott-Roth Report ¶ 30.

<sup>107</sup> *The Word Network*, Wikipedia, [https://en.wikipedia.org/wiki/The\\_Word\\_Network](https://en.wikipedia.org/wiki/The_Word_Network) (last visited June 6, 2017); Adell Decl. ¶ 6.

<sup>108</sup> Adell Decl. ¶ 3.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* ¶ 4.

American religious network.<sup>111</sup> It features a broad range of ministers, an informative religion-focused television lineup, and gospel music.<sup>112</sup>

50. TWN is available in over 200 countries, reaching millions of viewers in Europe, Africa, Asia, Australia, and the Americas.<sup>113</sup> TWN reaches nearly 93 million homes in the U.S. alone.<sup>114</sup> In addition, TWN also is distributed to one million men and women serving in the United States Armed Forces in over 65 countries.<sup>115</sup> It is also available to thousands of air travelers daily through “In Flight” services on selected airlines.<sup>116</sup>

51. TWN got its start when DIRECTV agreed to carry TWN nationally in 2000.<sup>117</sup> It is now also carried by Spectrum/Charter, Cox, CenturyLink, Cablevision, Comcast, AT&T, Suddenlink, Verizon, and other MVPDs.<sup>118</sup> Before the dispute, Comcast provided TWN to over half of its subscriber base.<sup>119</sup> Since January, that number is down to approximately one-quarter.<sup>120</sup>

52. Since its founding, TWN has continually improved the quality of its content and distribution systems.<sup>121</sup> In May of 2012, TWN completed a multimillion dollar

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<sup>111</sup> *Id.* ¶ 6.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* ¶ 9.

<sup>114</sup> *Id.* ¶ 3.

<sup>115</sup> *Id.* ¶ 9.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* ¶ 5.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* ¶ 18.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* ¶ 10.

state-of-the-art expansion on the campus of its international headquarters.<sup>122</sup> The expansion included production facilities, editing suites, green rooms, an executive conference room, and additional offices, in addition to a television studio with the latest in cutting-edge technology.<sup>123</sup> The television studio is capable of handling church services, telethons, live performances, and interviews.<sup>124</sup> TWN has the ability to bring the studio to the people with the latest technology, also producing remote programming by using a state-of-the-art production truck.<sup>125</sup> TWN's broadcasting technology continues to evolve making the network accessible not only to terrestrial and satellite viewers, but also to Internet users through TWN's streaming website.<sup>126</sup>

53. Millions of consumers rely upon TWN's programming for spiritual edification and life-improvement.<sup>127</sup> This programming includes a wide variety of popular ministers including Bishop T.D. Jakes, Bishop Charles H. Ellis III, Bishop Noel Jones, Dr. Mark Chironna, Pastor R.A. Vernon, Joyce Meyer, Benny Hinn and Joseph Prince.<sup>128</sup> TWN recognizes that music is a large part of the Christian experience, and it offers a lineup of gospel artists, interviews, videos and musical specials featuring artists such as Marvin Sapp, Kirk Franklin, Mary Mary, Donnie McClurkin, Hezekiah Walker, J Moss, Deitrick Haddon, CeCe Winans and Byron Cage, and newcomers such as Wess Morgan and VaShawn Mitchell.<sup>129</sup>

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* ¶ 8.

<sup>127</sup> *Id.* ¶ 3.

<sup>128</sup> *Id.* ¶ 6.

<sup>129</sup> *Id.*

54. TWN also provides live coverage from major religious events to millions of homes worldwide, distributing major national conventions and conferences including the Full Gospel Baptist Church Fellowship Conference, Pentecostal Assemblies of the World Convention, the Church of God in Christ Holy Convocation, the Pastors & Church Leaders Conference, International Faith Conference with Dr. Bill Winston, Watch Night Service with Dr. E. Dewey Smith, 7 Last Words with Dr. Jamal Bryant, and Strategies Conference with Bishop I.V. Hilliard.<sup>130</sup> This programming is especially valuable to the old and disabled, who cannot easily attend religious and inspirational services.<sup>131</sup>

55. TWN's web presence is strong. It receives over 70,000 unique website hits per month.<sup>132</sup> It has nearly a million followers on Facebook, 75,000 followers on Instagram, 41,700 followers on Twitter, and 12,400 followers on YouTube.<sup>133</sup> Since the dispute with Comcast began, TWN has received a sizable call volume protesting Comcast's decision.<sup>134</sup>

**B. There is no "legitimate business reason" for Comcast's decision to reduce distribution of TWN.**

56. The strength of TWN's programming content, and its status as the preeminent, most watched network for African American religious programming, underscore the fact that Comcast's decision to reduce TWN is unsupported by any "legitimate business reason" that would make its decision lawful.<sup>135</sup>

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<sup>130</sup> *Id.* ¶ 11.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* ¶ 8.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* ¶ 38.

<sup>135</sup> See Game Show Network, LLC v. Cablevision Systems Corp., *Initial Decision of Chief Administrative Law Judge Richard L. Sippel*, 31 FCC Rcd. 13841, 13896 ¶ 105 (2016) ("GSN ALJ Decision").

57. As an initial matter, TWN's carriage imposes no cost on Comcast. TWN does not charge Comcast a per-subscriber fee for distribution.<sup>136</sup> It provides its signal to Comcast free of charge.<sup>137</sup> This represents a substantial distinction from every previous carriage discrimination complaint against Comcast.<sup>138</sup> In addition, TWN pays for transporting the signal to Comcast.<sup>139</sup> TWN's programming brings Comcast a valuable and substantial audience, because of its special status in the African American community.<sup>140</sup> Because of the lack of a per-subscriber fee, Comcast incurs no financial harm from continuing its broad distribution of TWN.<sup>141</sup> Consequently, reducing distribution of TWN does not result in any cost savings for Comcast.

58. In fact, Comcast benefits substantially from the broad carriage of TWN's valuable, original programming.<sup>142</sup> Comcast generally carries TWN on its expanded basic tier or a similar tier.<sup>143</sup> This means that TWN viewers often pay an additional fee over the basic cable rate. Comcast benefits from this extra payment and the added value TWN brings to its expanded tier.<sup>144</sup> This economic benefit accrues to Comcast because of access to TWN's dedicated audience, which it has developed through its stature and popularity in the African American

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<sup>136</sup> Adell Decl. ¶ 19.

<sup>137</sup> *Id.*

<sup>138</sup> *See generally* Liberman Program Carriage Complaint; Bloomberg Complaint; Tennis Channel Program Carriage Complaint; WealthTV Carriage Agreement Complaint; MASN Carriage Agreement Complaint; NFL Program Carriage Complaint.

<sup>139</sup> Adell Decl. ¶¶ 19-20.

<sup>140</sup> *See* Furchtgott-Roth Report ¶ 23.

<sup>141</sup> Fratrick and Redpath Report ¶ 9.

<sup>142</sup> *See* Answer to Program Carriage Complaint of Cablevision Systems Corp., MB 12-122, File No. CSR-8529-P, at 50 (filed Dec. 12, 2011).

<sup>143</sup> Adell Decl. ¶ 17.

<sup>144</sup> *See id.* ¶ 17; *WealthTV/NFL/MASN HDO*, 23 FCC Rcd. at 14803 ¶ 33.

community.<sup>145</sup> TWN additionally pays Comcast to distribute TWN, in the form of fees for transport.<sup>146</sup> These fees have not changed since Comcast reduced TWN's distribution.<sup>147</sup>

59. Comcast also replaced TWN with an objectively inferior network—the Impact Network. The Impact Network sends its signal to Comcast through the Internet and does not pay Comcast for a satellite uplink, which means the quality of its video feed is poor.<sup>148</sup> In contrast, TWN's satellite-delivered signal delivers a high-quality viewing experience.<sup>149</sup>

60. The Impact Network's distribution also is limited compared to TWN. TWN reaches nearly 93 million homes in the U.S. alone through DIRECTV, AT&T, Verizon, Comcast, Spectrum/Charter, Cox, and a host of other MVPDs.<sup>150</sup> In addition TWN is available in over 200 countries, including to one million men and women serving in the United States Armed Forces, and it is available to thousands of air travelers daily through "In Flight" services on selected airlines.<sup>151</sup> The Impact Network, on the other hand, claims it reaches approximately 75 million people.<sup>152</sup>

61. This difference in quality and distribution is directly attributable to the Impact Network being less popular than TWN. First, the Impact Network commands lesser fees from ministers for airtime.<sup>153</sup> While TWN charges between {REDACTED} and {REDACTED} for a half-hour

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<sup>145</sup> Furchtgott-Roth Report ¶ 23.

<sup>146</sup> Adell Decl. ¶ 19.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* ¶ 14.

<sup>149</sup> *Id.* ¶ 20.

<sup>150</sup> *Id.* ¶¶ 3, 5.

<sup>151</sup> *Id.* ¶ 9.

<sup>152</sup> *See id.* ¶ 13; *About*, Impact Network, <http://watchimpact.com/about> (last visited June 4, 2017) (noting that the Impact Network is broadcast in 75 million homes).

<sup>153</sup> Ellis Decl. ¶ 17; Adell Decl. ¶ 12.

time slot,<sup>154</sup> the Impact Network { [REDACTED] }  
 [REDACTED]  
 [REDACTED] }.<sup>155</sup> Other times, the Impact Network { [REDACTED] }  
 [REDACTED] }.<sup>156</sup>

62. Additionally, the Impact Network features less popular ministers than TWN. TWN features many of the most popular preachers in the United States, with congregations in the hundreds of thousands.<sup>157</sup> Many of these preachers, such as Bishop Charles Ellis III, make their programming available only through TWN.<sup>158</sup> The Impact Network, on the other hand, primarily features less popular preachers, with smaller congregations.<sup>159</sup> The Impact Network's programming also is narrower than TWN's, focusing substantially on Bishop Wayne T. Jackson's programming.<sup>160</sup>

63. Moreover, Comcast's decision to reduce TWN runs counter to the continuing broad distribution of TWN by other major MVPDs.<sup>161</sup> TWN is distributed by DIRECTV, AT&T, and Verizon to { [REDACTED] } of their subscribers, while Spectrum/Charter distributes TWN to approximately { [REDACTED] } of its subscribers.<sup>162</sup> Post-reduction, Comcast distributes TWN to approximately 5 million subscribers, less than one-quarter of its total

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<sup>154</sup> Adell Decl. ¶ 12.

<sup>155</sup> Ellis Decl. ¶ 17.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* ¶ 7.

<sup>158</sup> Adell Decl. ¶ 6.

<sup>159</sup> Ellis Decl. ¶ 15.

<sup>160</sup> *Id.*; Adell Decl. ¶ 14.

<sup>161</sup> *See WealthTV/NFL/MASN HDO*, 23 FCC Rcd. at 14840 ¶ 118 (accepting as evidence of a network's popularity that the network is carried by every other MVPD in an applicable market).

<sup>162</sup> TWN Subscribers By MVPD; Total Subscribers Per MVPD.



subscribers.<sup>163</sup> The other MVPDs carry TWN more widely and provide substantial viewership because it has a status as a special brand and an engaged African American audience that benefit the MVPDs.<sup>164</sup> The fact that other MVPDs more widely carry TWN, and TWN's ratings have increased, underscore that Comcast had no sound business reason for reducing TWN's carriage.<sup>165</sup>

64. Comcast also has removed TWN in high-ranking DMAs where Comcast has substantial market share and where consumers lack viable MVPD alternatives to which they could switch in order to continue accessing TWN programming. In other words, Comcast reduced TWN's distribution in markets where it risked little by doing so. In Philadelphia, Comcast's market share of television homes is sixty-seven percent.<sup>166</sup> Comcast's market share among the MVPDs that carry TWN is even higher.

65. In two other key African American markets where TWN was removed, Washington D.C. and Baltimore, Comcast's main cable operator competitor, RCN Corporation, does not distribute TWN.<sup>167</sup> In addition, the dropped markets tended to have high African-American populations.<sup>168</sup> Curiously, Comcast maintained TWN distribution in smaller African American markets.<sup>169</sup>

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<sup>163</sup> Adell Decl. ¶ 18.

<sup>164</sup> See Furchtgott-Roth Report ¶ 23.

<sup>165</sup> Fratrik and Redpath Report ¶ 12.

<sup>166</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4285 ¶ 116.

<sup>167</sup> See *DC Metro Channel Lineups*, RCN, <http://www.rcn.com/dc-metro/digital-cable-tv/channel-lineups> (last visited June 3, 2017).

<sup>168</sup> Fratrik and Redpath Report ¶ 6.

<sup>169</sup> *Id.* ¶ 7.

66. Comcast made its decision without engaging in any good-faith negotiations with TWN. Comcast neither provided prior notice to TWN of its intent to reduce distribution, nor did it provide any substantive reason for its decision to reduce distribution of TWN.<sup>170</sup> Comcast also failed to provide TWN with the opportunity to cure any alleged shortcomings.<sup>171</sup> Indeed, when TWN offered to undertake substantial efforts to promote TWN, Comcast failed to give such offers any consideration.<sup>172</sup> These failures cut directly against the *Comcast-NBCU Order*, which specifically crafted the non-discrimination condition to allow “flexibility to engage in good faith, arm’s-length transactions.”<sup>173</sup>

67. Similarly, Comcast’s decision to reduce TWN is unsupported by any cost-benefit analysis. Comcast did not appear to substantively analyze TWN’s merits before making its decision, and it failed to give consideration to such merits when they were presented.<sup>174</sup> Specifically, Comcast failed to gather input to make an informed decision from any person knowledgeable about African American religious programming, even when prominent leaders in the African American community offered to explain this ecosystem to Comcast executives.<sup>175</sup>

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<sup>170</sup> Adell Decl. ¶¶ 21, 25.

<sup>171</sup> *Id.* ¶ 25.

<sup>172</sup> *Id.* ¶ 30.

<sup>173</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4285 ¶ 118; *see also* Revision of the Commission’s Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, *Second Report and Order*, and *Notice of Proposed Rulemaking*, 26 FCC Rcd. 11494, 11516 ¶ 30 (2011) (discussing expectation that parties to a program carriage complaint will “deal and negotiate with one another in good faith to come to settlement”) (“*2011 Order*”), *vacated in part by Time Warner Cable, Inc. v. FCC*, 729 F.3d 137 (2nd Cir. 2013); *GSN ALJ Decision*, 31 FCC Rcd. at 13897 n.486 (noting “window for negotiation” that Cablevision was not willing to participate between retiering decision and retiering).

<sup>174</sup> Adell Decl. ¶¶ 17, 27-30.

<sup>175</sup> Ellis Decl. ¶¶ 23, 25.

Nor did it gather information regarding what viewers of ministry programming value.<sup>176</sup> This information is critically important in making programming carriage decisions.<sup>177</sup> TWN's religious programming is important because it is substantially different from other programming typically carried by an MVPD, and it has the covariance to attract new audiences to MVPDs that they may not have been able to attract without such programming.<sup>178</sup>

68. The few excuses that Comcast provided TWN are unconvincing and post hoc rationalizations. Comcast claimed that TWN's viewership numbers were poor, but it refused to provide any evidence to TWN to support this claim.<sup>179</sup> Comcast also had never given TWN any indication of any dissatisfaction with its network.<sup>180</sup> Further, eliminating distribution to 7 million subscribers without any substantive evidence justifying such a decision is a significant departure from industry norms.<sup>181</sup>

69. Even when pressed by TWN, Comcast refused to say how TWN could improve or what TWN needed to do to improve to a level that would merit broad distribution in Comcast's eyes.<sup>182</sup> Comcast even refused to revisit its decision after TWN made offers to pay

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<sup>176</sup> *Id.* ¶ 19.

<sup>177</sup> *Id.*

<sup>178</sup> Furchtgott-Roth Report ¶ 23.

<sup>179</sup> Adell Decl. ¶ 29.

<sup>180</sup> *Id.* ¶¶ 21, 24.

<sup>181</sup> *See Comcast Feels Empowered to Bully THE WORD NETWORK, The Largest Voice in the Black Church*, PR Newswire (Dec. 1, 2016), <http://www.prnewswire.com/news-releases/comcast-feels-empowered-to-bully-the-word-network-the-largest-voice-in-the-black-church-300371346.html>.

<sup>182</sup> Adell Decl. ¶ 29.

for advertisements and promotions, and undertake other efforts to improve the quality of TWN.<sup>183</sup>

70. Comcast's justification of its decision on the basis that TWN is not a good partner because Mr. Adell never came to visit Comcast does not justify such a drastic reduction in TWN's distribution. In the seventeen-year relationship between Comcast and TWN, Comcast never expressed a desire to have Mr. Adell make such a visit.<sup>184</sup> Moreover, Mr. Adell made clear that he was willing to visit Comcast's headquarters going forward, whenever Comcast desired.<sup>185</sup>

71. Comcast tasked a government affairs employee with no authority to make programming decisions, nor knowledge of TWN or the Impact Network, to engage with TWN's ministry programmers.<sup>186</sup> This was done despite attempts by such programmers to engage with senior representatives of Comcast's programming division.<sup>187</sup>

**C. Comcast treats its affiliated networks better than TWN.**

72. Despite TWN's popularity and loyal audience following, Comcast slashed TWN's distribution without any legitimate business reason. This stands in stark contrast to the treatment Comcast gives its affiliate networks. Comcast provides broader distribution and pays each a generous per-subscriber fee, even when its networks are underperforming or even failing. In other words, Comcast slashed distribution of the most popular network in its genre (i.e., TWN), while at the same time, it increased distribution and per-subscriber fees of affiliated

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<sup>183</sup> *Id.* ¶ 30.

<sup>184</sup> *Id.* ¶ 36.

<sup>185</sup> *Id.*

<sup>186</sup> Ellis Decl. ¶ 21.

<sup>187</sup> *Id.* ¶ 20.

networks that failed to perform and were not ratings leaders in their respective genres. There is no reason for Comcast's disparate treatment between TWN and Comcast's affiliated networks, except that Comcast treats its own channels better.<sup>188</sup>

73. And, the willingness of Comcast to incur the additional costs associated with expanded distribution of poorly performing affiliated networks further demonstrates that Comcast discriminated in favor of its affiliates. As TWN experts Dr. Fratrick and Mr. Redpath observe, "Comcast is taking on huge costs for its affiliated programming, providing a discriminatory preferential treatment over the way it treats its non-affiliated networks – TWN, for example, whose carriage it is decreasing even as its ratings increase and even as Comcast incurs no cost for its carriage."<sup>189</sup>

74. Comcast pays every one of its affiliated networks a generous per-subscriber fee.<sup>190</sup> Comcast-affiliated, general/variety networks Bravo, E!, and USA Network received affiliate revenue per average subscriber per month of [REDACTED], respectively, for 2016.<sup>191</sup> Even niche networks Syfy and Chiller received an average of [REDACTED] [REDACTED] per subscriber, respectively, while the Oxygen Network received [REDACTED] and NBC Universo received [REDACTED].<sup>192</sup>

<sup>188</sup> Comcast treats affiliated networks "like siblings as opposed to like strangers" and gives them a "different level of scrutiny" than unaffiliated providers. *Tennis Channel ALJ Decision*, 26 FCC Rcd. at 17186 ¶ 55 (citing testimony of Steven Burke, then President of Comcast Cable and COO of Comcast Corporation).

<sup>189</sup> Fratrick and Redpath Report ¶ 16.

<sup>190</sup> See *TV Network Summary*, SNL Kagan, [https://www.snl.com/web/client?auth=inherit#industry/tv\\_NetworksSummary](https://www.snl.com/web/client?auth=inherit#industry/tv_NetworksSummary) (Set "Financial Item" to "Affiliate Revenue per Avg Sub/Month" and "Country of Operation" to "USA") (last visited June 5, 2017) ("Comcast Affiliates Per Subscriber Fees") (showing that each Comcast-affiliated network has an average subscriber fee/month of at least [REDACTED]).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

75. Comcast rewards its affiliated networks with expanded distribution and increased per-subscriber fees even in the face of decreasing ratings. And it does so even when those networks have fewer viewers than more popular, unaffiliated networks in those genres. As part of a rebrand and relaunch in the second quarter of 2015, for example, Comcast increased distribution of its affiliated NBC Universo network from {REDACTED} subscribers to {REDACTED}.<sup>193</sup> Comcast did so despite clear, repeated drops in both NBC Universo's average 24-hour ratings and average prime time ratings. NBC Universo's average 24-hour ratings consecutively dropped from {REDACTED} to {REDACTED} to {REDACTED} from 2013-2015, while its average prime time ratings consecutively dropped from {REDACTED} to {REDACTED} to {REDACTED} over that same period.<sup>194</sup> The only reason that Comcast would expand distribution and increase per-subscriber fees of a network that repeatedly draws smaller and smaller audiences is, of course, affiliation.<sup>195</sup>

76. This ratings drop occurred contemporaneously with an increase of NBC Universo's per subscriber monthly fees from {REDACTED} to {REDACTED}.<sup>196</sup> The only reason why Comcast would increase compensation for an unpopular network, even after an increase in carriage, is because the network is affiliated with the MVPD.<sup>197</sup> In contrast, the reason Comcast

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<sup>193</sup> See *Package Subscribers by Network*, SNL Kagan, <https://www.snl.com/web/client?auth=inherit#industry/mediaCensusWrapper?ReportID=ec28bb11-7386-4081-9ad0-1eb6542361b9> (Set "Network" to "NBC Universo" and "Package Type" to "Buy Through" and "Date" to "2015Q1" and "2015Q2").

<sup>194</sup> See *TV Network Summary*, SNL Kagan, [https://www.snl.com/web/client?auth=inherit#industry/tv\\_NetworksSummary](https://www.snl.com/web/client?auth=inherit#industry/tv_NetworksSummary) (Set "Financial Item" to "Average 24 Hour Rating" and "Country of Operation" to "USA") (last visited June 5, 2017) ("Comcast Affiliates Average 24 Hour Rating"); *TV Network Summary*, SNL Kagan, [https://www.snl.com/web/client?auth=inherit#industry/tv\\_NetworksSummary](https://www.snl.com/web/client?auth=inherit#industry/tv_NetworksSummary) (Set "Financial Item" to "Average Prime Time Rating" and "Country of Operation" to "USA") (last visited June 5, 2017) ("Comcast Affiliates Average Prime Time Rating").

<sup>195</sup> Fratrik and Redpath Report ¶¶ 15-16; Ellis Decl. ¶ 13.

<sup>196</sup> Comcast Affiliates Per Subscriber Fees.

<sup>197</sup> Fratrik and Redpath Report ¶¶ 15-16.

slashed distribution of TWN—despite its genre-leading popularity, increasing viewership, and unmatched production quality—is because it is not affiliated with Comcast. Based on its treatment of its laggard affiliate networks, Comcast should have increased distribution of TWN rather than slash it.

77. Indeed, the affiliate revenue per average subscriber per month has increased for Comcast-affiliated networks Bravo, E!, the Golf Channel, Oxygen Network, Sprout, Syfy, USA and numerous Comcast regional sports networks, despite decreasing ratings.<sup>198</sup> The average subscriber fee paid to Syfy, for example, increased from {REDACTED} in 2013 to {REDACTED} in 2015, an increase of over {REDACTED}.<sup>199</sup> Meanwhile, Syfy’s average 24-hour rating decreased from {REDACTED} to {REDACTED}, and its average prime time rating decreased from {REDACTED} to {REDACTED}.<sup>200</sup> Increasing the distribution and compensation of unpopular networks because they are affiliated while decreasing the carriage of a popular (and uncompensated) but unaffiliated network is not lawful under the *Comcast-NBCU Order*.<sup>201</sup>

78. Comcast also distributes its affiliated networks more broadly than TWN.<sup>202</sup> All Comcast-affiliated networks for which data is available were distributed to at least {REDACTED} Comcast subscribers during the fourth quarter of 2015.<sup>203</sup> E! and the USA Network

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<sup>198</sup> See Comcast Affiliates Per Subscriber Fees.

<sup>199</sup> *Id.*

<sup>200</sup> Comcast Affiliates Average 24 Hour Rating; Comcast Affiliates Average Prime Time Rating.

<sup>201</sup> See Fratrik and Redpath Report ¶ 18.

<sup>202</sup> See *Tennis Channel Inc. v. Comcast Cable Communications, LLC, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 25 FCC Rcd. 14149, 14161 ¶ 19.

<sup>203</sup> See *Package Subscribers by Network*, SNL Kagan, <https://www.snl.com/web/client?auth=inherit#industry/mediaCensusWrapper?ReportID=ec28bb11-7386-4081-9ad0-1eb6542361b9> (Set “Network” to “Bravo,” “CNBC,” “E!,” “Esquire,” “Golf Channel,” “MSNBC,” “NBC Universo,” “NBCSN,” “Oxygen Network,” “Sprout,” “Syfy,” “Telemundo,” “The Weather Channel,” “Universal HD,” and “USA Network,” and “Package

each received distribution to nearly {REDACTED} subscribers, while Bravo was distributed to over {REDACTED}.<sup>204</sup> Niche network Syfy received distribution to {REDACTED} subscribers, while the Oxygen Network was distributed to {REDACTED} subscribers and NBC Universo was distributed to {REDACTED} subscribers.<sup>205</sup> TWN, on the other hand, now receives distribution to 5 million Comcast subscribers, accounting for less than one-quarter of Comcast's total cable subscribers.<sup>206</sup>

79. Comcast's affiliation with its networks alone is sufficient to ensure this broad distribution.<sup>207</sup> Comcast, for example, has previously planned to give newly-launched, affiliated U.S. Olympic Network broad distribution as "as part of its digital basic offerings," which would "giv[e] it more exposure than competing premium sports cable channels" despite the channel having no rights to air any Olympic games.<sup>208</sup> Comcast also continued to distribute broadly, without consideration of moving to a premium sports tier, a newly-affiliated sports channel that Comcast's former head of programming characterized as "a crappy channel that was dead in the water."<sup>209</sup> This network is known today as NBCSN, and was formerly known as both OLN and Versus.

80. When a newly-affiliated network is not already broadly distributed by Comcast, Comcast expands its distribution. Comcast Cable's 2009 agreement to obtain equity in

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Type" to "Buy Through" and "Date" to "2014Q4," "2015Q4," and "2016Q3") ("Comcast Affiliates Distribution").

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> Adell Decl. ¶ 18.

<sup>207</sup> *Tennis Channel ALJ Decision*, 26 FCC Rcd. at 17187 ¶ 58 ("[A]ffiliation by itself generally is sufficient to ensure that a sports network is widely distributed on Comcast systems.").

<sup>208</sup> *Id.* at 17187-88 ¶ 58.

<sup>209</sup> *Id.*



the NHL Network provided that the network would be repositioned from a premium sports tier to a more highly-penetrated Digital Preferred Tier, and it directly tied the amount of equity that Comcast would receive in the network to the level of distribution provided by Comcast Cable.<sup>210</sup> In addition, Comcast Cable reassessed its original decision to place the new MLB Network on a sports tier upon receiving equity in that network, and instead launched it on its broader Digital Preferred Tier.<sup>211</sup>

81. Comcast gives its affiliated networks special assistance or favorable treatment in a number of other ways.<sup>212</sup> Comcast treats affiliated networks “like siblings as opposed to like strangers” and gives them a “different level of scrutiny” than unaffiliated providers.<sup>213</sup> This “sibling relationship” with its affiliated networks “probably [affords those companies] greater access.”<sup>214</sup> Ms. Gaiki in particular has previously required affiliated networks to be given “sufficient” distribution to meet their contractual obligations, which is unusual behavior for a cable distributor.<sup>215</sup>

82. Comcast gives its affiliated networks broader distribution than they have with other major MVPDs. NBC Universo, as of the third quarter of 2016, was distributed to {REDACTED} subscribers on Comcast.<sup>216</sup> This represents {REDACTED} more subscribers than the {REDACTED} subscribers that have access to NBC Universo through Spectrum/Charter, the

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<sup>210</sup> *Id.* at 17188 ¶ 59.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* at 17188 ¶ 60.

<sup>213</sup> *Id.* at 17186 ¶ 55 (citing testimony of Steven Burke, then President of Comcast Cable and COO of Comcast Corporation).

<sup>214</sup> *Id.* (citing testimony of Madison Bond, the Comcast executive responsible for distribution decisions).

<sup>215</sup> *Id.* at 17188 ¶ 60.

<sup>216</sup> *See* Comcast Affiliates Distribution.

second largest cable operator.<sup>217</sup> Distribution by other MVPDs also was substantially lower. NBC Universo reached {REDACTED} subscribers on AT&T's U-verse, {REDACTED} subscribers on DIRECTV, {REDACTED} subscribers on DISH Network, and {REDACTED} subscribers through Verizon.<sup>218</sup> Comcast's distribution of affiliated network the Oxygen Network to {REDACTED} subscribers also reaches more viewers than the distribution by its MVPD rivals.<sup>219</sup> The increased carriage of its own affiliated networks further demonstrates that Comcast bases its carriage decisions on affiliation.<sup>220</sup>

83. This gap in distribution continues to widen, as Comcast continues to broadly distribute its affiliated networks despite reduction in distribution of these same networks by other major MVPDs. For example, while Comcast reduced distribution of the Oxygen Network by {REDACTED} between the fourth quarter of 2014 and the third quarter of 2016,<sup>221</sup> the decreases by other MVPDs during that same time were far more substantial. AT&T decreased distribution by {REDACTED} on its U-verse system, DISH Network decreased distribution by {REDACTED}, and DIRECTV decreased distribution by {REDACTED}.<sup>222</sup> Spectrum/Charter and Verizon, meanwhile, decreased the Oxygen Network's distribution by {REDACTED} and {REDACTED}, respectively.<sup>223</sup> The magnitude of even the smallest decrease by Spectrum was {REDACTED}

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<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* (Spectrum/Charter: {REDACTED} subscribers; AT&T: {REDACTED} subscribers; DIRECTV: {REDACTED} subscribers; DISH Network: {REDACTED} subscribers; Verizon: {REDACTED} subscribers).

<sup>220</sup> Fratrick and Redpath Report ¶¶ 16-18.

<sup>221</sup> Comcast Affiliates Distribution.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

larger than that of Comcast. In contrast, Comcast distributes TWN less broadly than TWN is distributed by competing MVPDs.<sup>224</sup>

84. Further, in analyzing three years' worth of ratings and per-subscriber fee data for Comcast's affiliated networks, Fratrik and Redpath concluded

“[t]his history of what Comcast/NBCU is paying its owned networks makes clear that even in the face of continued low ratings, the amount being paid is noticeable and actually increasing for all of these networks. This continued carriage of these networks with increasing costs shows a distinct preference when compared to the decreased carriage of TWN, even though TWN does not charge for that carriage. The showing of this preference over TWN suggests that the decision to drop TWN from some of its systems was not a sound business or financial decision, and based on other undefined reasons.”<sup>225</sup>

The preferential treatment of Comcast's affiliated networks over TWN constitute a violation of the *Comcast-NBCU Order* conditions.

**D. Comcast unlawfully discriminated against TWN when it demanded certain of TWN's digital rights.**

85. The *Comcast-NBCU Order* conditions prohibit discrimination on the basis of affiliation or non-affiliation.<sup>226</sup> This means that Comcast cannot require a programmer to become affiliated as a condition of carriage. Yet, during the November 22 meeting, Comcast did just that. It unlawfully discriminated against TWN on the basis of affiliation by demanding digital rights to TWN's programming, which, if granted, would constitute an affiliation interest. Instead of engaging with Mr. Adell during his attempts to negotiate a revocation of Ms. Gaiski's letter, Ms. Gaiski asked about TWN's online distribution rights, an unrelated matter in which Comcast had not previously expressed interest.<sup>227</sup> Mr. Adell responded that TWN streams its

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<sup>224</sup> Adell Decl. ¶ 18; TWN Subscribers By MVPD; Total Subscribers Per MVPD.

<sup>225</sup> Fratrik and Redpath Report ¶ 18.

<sup>226</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4282, 4287 ¶¶ 110, 121.

<sup>227</sup> Adell Decl. ¶ 32.

content through TWN's website and has not licensed it, or provided any rights to, any other distributor.<sup>228</sup> Comcast informed TWN that its policy is to not carry a video programming vendor unless the video programming vendor grants Comcast its digital rights, and it refused to negotiate with TWN for the reversal of its decision to slash TWN's distribution unless TWN granted Comcast exclusive digital rights.<sup>229</sup> TWN reiterated that it would not part with its exclusive world-wide digital rights, as TWN uses them as part of its business model.<sup>230</sup> In response, Comcast refused to negotiate any further, making it obvious that negotiations would not proceed until TWN agreed to grant Comcast exclusive online digital rights.<sup>231</sup>

86. The digital rights Comcast demanded, if granted, would create an affiliation between Comcast and TWN and such demand constitutes unlawful discrimination against TWN on the basis of non-affiliation. The digital rights are at least { [REDACTED] }, which would substantially exceed the Commission's threshold for attributable interest of an affiliate.<sup>232</sup> Granting the rights would also harm TWN as it would undermine the substantial effort and investment TWN has made in its online distribution in recent years and make it less appealing to other MVPDs.<sup>233</sup>

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<sup>228</sup> *Id.*

<sup>229</sup> *Id.* ¶ 35.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> Furchtgott-Roth Report ¶ 30; Adell Decl. ¶ 32.

<sup>233</sup> Furchtgott-Roth Report ¶ 27.

### III. COMCAST DEMANDED TWN'S DIGITAL RIGHTS IN VIOLATION OF THE COMCAST-NBCU ORDER

#### A. Comcast Violated the *Comcast-NBCU Order*'s prohibition on entering into an arrangement that limits TWN's ability to provide its video programming to OVDs.

87. Under the *Comcast-NBCU Order*, Comcast is prohibited from “enter[ing] into or enforc[ing] any agreement or arrangement for carriage on Comcast’s MVPD system that forbids, limits, or creates incentives to limit a broadcast network or cable programmer’s provision of its Video Programming to one or more OVDs,” unless one of three exceptions applies.<sup>234</sup> Comcast violated this provision when it demanded, during the November 22 meeting, that TWN relinquish certain digital rights as a condition of carriage on Comcast’s linear system.<sup>235</sup>

88. None of the exceptions to Condition IV(B)(3) is present in this case. Comcast did not propose to pay for TWN’s digital rights; propose an exclusivity arrangement limited to 14 days; or request that Comcast be treated in material parity with a similarly situated MVPD.<sup>236</sup>

89. Rather, Comcast’s refusal to negotiate with TWN for expanded linear distribution unless TWN first agreed to relinquish certain of its digital rights constitutes a unilateral arrangement for carriage on Comcast’s MVPD system.

90. Such a unilateral arrangement negatively affects TWN by limiting its ability to retain exclusive online distribution rights for itself, or to grant any distribution rights to

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<sup>234</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4361, Appendix A, Condition IV(B)(3).

<sup>235</sup> Adell Decl. ¶ 32.

<sup>236</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4361, Appendix A, Condition IV(B)(3)(a-c).

a third-party. Any MVPD that carries TWN would find it a less appealing option in the future if TWN gave its exclusive rights to Comcast.<sup>237</sup>

**B. Comcast violated the *Comcast-NBCU Order*'s prohibition on engaging in unfair methods of competition, acts or practices that significantly hinder TWN's ability to provide its video programming to subscribers.**

91. The *Comcast-NBCU Order* also prohibits Comcast from "engag[ing] in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any MVPD or OVD from providing Video Programming online to subscribers or consumers."<sup>238</sup> Comcast violated this provision when it demanded that TWN relinquish certain digital rights as a condition of carriage on Comcast's linear system.<sup>239</sup>

92. Distribution by Comcast is necessary to a network's viability.<sup>240</sup> By refusing to negotiate for broad distribution unless TWN gave Comcast its online distribution rights, Comcast unfairly restricted TWN from access to Comcast subscribers. By demanding digital rights, Comcast tried to leverage its subscriber base to force an attributable interest in TWN.

93. Moreover, this refusal to negotiate for cable carriage without also granting Comcast online distribution rights is an unfair practice that limits TWN's exclusive rights to its own online video programming. If Comcast usurps some of TWN's exclusive digital content,

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<sup>237</sup> Furchtgott-Roth Report ¶ 27.

<sup>238</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4361, Appendix A, Condition IV(G)(1)(a).

<sup>239</sup> Adell Decl. ¶ 32.

<sup>240</sup> See Herring Broadcasting, Inc. d/b/a WealthTV Reply to Opposition to Petitions to Deny and Response to Comments, MB Docket No. 10-56, at 9 (Aug. 19, 2010).

TWN's ability to license those rights is diminished. Any MVPD that carries TWN would be less interested in the future if TWN gave its exclusive rights to Comcast.<sup>241</sup>

**IV. COMCAST DEMANDED TWN'S DIGITAL RIGHTS IN VIOLATION OF SECTION 616 AND THE COMMISSION'S PROGRAM CARRIAGE RULES.**

**A. Comcast demanded a financial interest in TWN.**

94. Comcast demanded a financial interest in TWN when it demanded, during the November 22 meeting, that TWN relinquish certain digital rights as a condition of carriage on Comcast's linear system. This demand would have created an attributable interest, as the value of TWN's digital rights is {REDACTED}, vastly exceeding the Commission's threshold for an attributable interest of an affiliate.<sup>242</sup>

**B. Section 616 forbids Comcast from requiring a financial interest in TWN as a prerequisite for carriage.**

95. Comcast's demand was unlawful. Section 616 prohibits an MVPD from demanding a financial interest in a video programming vendor as a condition of carriage.<sup>243</sup> The Commission implemented Section 616 by promulgating rules that prevent cable operators or MVPDs from requiring a financial interest in a video programming vendor as a condition for carriage.<sup>244</sup> The digital rights are at least {REDACTED}, which substantially exceed the Commission's threshold for attributable interest of an affiliate.<sup>245</sup>

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<sup>241</sup> Furchtgott-Roth ¶ 29.

<sup>242</sup> *Id.* ¶ 28.

<sup>243</sup> 47 U.S.C. § 536(a)(1) (“[The Commission shall issue regulations that] include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems. . .”).

<sup>244</sup> 47 C.F.R. § 76.1301(a) (“No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.”).

<sup>245</sup> Furchtgott-Roth Report ¶ 30; Adell Decl. ¶ 32.

96. The online distribution rights demanded by Comcast are distinct from basic linear transmission rights.<sup>246</sup> The digital rights would allow Comcast to disseminate TWN's programming through the Internet to be accessed on demand by Comcast subscribers. In contrast, the basic linear transmission rights by themselves do not allow Comcast to rebroadcast programming in a video-on-demand library or distribute the content over broadband.

97. The Commission does not define "financial interest" in its rules, but has clarified its meaning through adjudication. Contrary to Comcast's claims during its program carriage dispute with NFL Enterprises that the licensing rights to an NFL games package at dispute could not constitute a "financial interest," and that a financial interest could only mean a demand for equity in the NFL Network,<sup>247</sup> the Media Bureau has found that a "financial interest" is broader than an "equity interest" and applies to licensing rights too.<sup>248</sup>

98. The Commission has repeatedly stated that a demand for a financial interest can occur in multiple ways, finding that "ultimatums, intimidation, conduct that amounts to the exertion of pressure beyond good faith negotiations, or behavior that is tantamount to an unreasonable refusal to deal with a vendor who refuses to grant financial interests..." constitutes unlawful behavior.<sup>249</sup> The Commission explicitly rejected calls that it should require "evidence of explicit threats" because it recognized coercion can occur outside of an explicit threat.<sup>250</sup> For similar reasons, the Commission refused to create a single standard, instead desiring to examine

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<sup>246</sup> See Liberman Reply to Answer to Program Carriage Complaint at 12 ¶ 23.

<sup>247</sup> *WealthTV/NFL/MASN HDO*, 23 FCC Rcd. at 14828 ¶ 87.

<sup>248</sup> *Id.* at 14828-29 ¶¶ 88-89.

<sup>249</sup> Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage, *Second Report and Order*, 9 FCC Rcd. 2642, 2649 ¶ 17 (1993) ("1993 Order").

<sup>250</sup> *Id.*



each dispute on a case-by-case basis.<sup>251</sup> Although the Commission desired flexibility to allow for negotiations, it also marked some behaviors as impermissible.<sup>252</sup>

99. TWN has invested heavily in making its digital rights valuable.<sup>253</sup> It has created a DVR system that allows viewers to see the last 48 hours of its programming.<sup>254</sup> The popularity of its online presence in general, as measured by Facebook and Instagram statistics, and the TWN website traffic numbers, demonstrate the success of its investment in online distribution strategies.<sup>255</sup> Comcast's demand would destroy TWN's investment.

**C. TWN has demonstrated a *prima facie* case of a financial interest violation.**

100. Mr. Adell's declaration establishes a *prima facie* case that Comcast demanded financial rights as a precondition for carriage.<sup>256</sup> Mr. Adell has over 25 years of experience in the programming industry and recognized that Comcast's attempt to gain TWN's digital rights was an implicit threat that Comcast would slash distribution of TWN unless TWN gave Comcast a financial interest in his company.<sup>257</sup>

101. Additionally, as the Commission has recognized, the timing of the demand for a financial interest relative to carriage negotiations can be indicative of a financial interest violation.<sup>258</sup> Comcast made this demand contemporaneous with Mr. Adell's plea for maintenance of TWN's existing carriage. Comcast made clear that without acceding to the

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<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> Furchtgott-Roth Report ¶¶ 24-25.

<sup>254</sup> *Id.* ¶ 25; Adell Decl. ¶ 8.

<sup>255</sup> Furchtgott-Roth Report ¶ 24; Adell Decl. ¶ 8.

<sup>256</sup> 47 C.F.R. § 1302(d)(3); *see also 2011 Order*, 26 FCC Rcd. at 11503 ¶ 10.

<sup>257</sup> Adell Decl. ¶ 34.

<sup>258</sup> *1993 Order*, 9 FCC Rcd. at 2646 ¶ 10, 2649 ¶ 17.

demand, TWN would not have any success in retaining existing carriage.<sup>259</sup> Comcast presented the two issues as linked. This is not a case where Comcast made the demand months removed from negotiations.<sup>260</sup> This refusal to negotiate is another factor explicitly mentioned by the Commission as evidence that an MVPD is engaging in a prohibited coercive demand for a financial interest.<sup>261</sup>

### REQUEST FOR RELIEF

102. The Media Bureau should find that Comcast discriminated against TWN in violation of the *Comcast-NBCU Order*'s non-discrimination condition by discriminating against TWN on the basis of affiliation and non-affiliation.

103. Additionally, the Media Bureau should find that Comcast unlawfully demanded that TWN relinquish its digital rights as a condition of carriage in violation of Condition IV(B)(3) and Condition IV(G)(1)(a) of the *Comcast-NBCU Order*.

104. The Media Bureau should further find that Comcast violated Section 616 and 47 C.F.R. § 76.1301(a) by requiring TWN to give Comcast a financial interest in TWN's digital rights as a condition of carriage.

105. To remedy these violations, the Media Bureau should order Comcast to carry TWN in an identical manner to its carriage immediately prior to the system reductions on or around January 12, 2017, including identical tier and channel placements and to the same number of subscribers and households, within 45 days of the Media Bureau's order, as well as permanently enjoin Comcast from removing TWN from any Comcast system or otherwise reducing distribution on Comcast's linear cable service. The Media Bureau should additionally

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<sup>259</sup> Adell Decl. ¶¶ 32-35.

<sup>260</sup> *Id.*


<sup>261</sup> *1993 Order*, 9 FCC Rcd. at 2649 ¶ 17.

order Comcast to reimburse TWN for all costs and damages sustained by TWN as a result of Comcast's unlawful actions. The Media Bureau should also impose the maximum permissible forfeiture on Comcast and order any further relief that the Media Bureau deems appropriate.

106. Although Comcast may provide pretextual justifications for its actions, the material facts underlying this complaint are undisputable. Accordingly, the Media Bureau should provide the requested relief based on the pleadings.

Respectfully submitted,

Kevin Adell  
**THE WORD NETWORK**  
20733 West 10 Mile Rd.  
Southfield, MI 48075  
(855)730-9673

  
Markham C. Erickson  
Christopher Bjornson  
Matthew R. Friedman  
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Washington, D.C. 20036  
(202) 429-3000

*Counsel to Word Network Operating  
Company, Inc. d/b/a The Word Network*

June 8, 2017

**VERIFICATION OF KEVIN ADELL**

I, Kevin Adell, am the President and Chief Executive Officer of Word Network Operating Company, Inc. d/b/a The Word Network. I verify that I have read this submission. To the best of my knowledge, information and belief formed after reasonable inquiry, this submission is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and is not interposed for any improper purpose.

By: 

Kevin Adell

President and Chief Executive Officer

Word Network Operating Company, Inc. d/b/a The  
Word Network

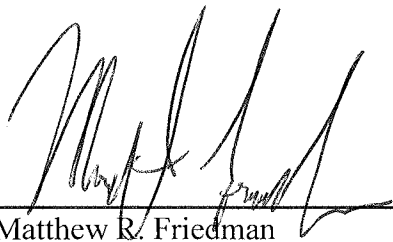
Dated: June 8, 2017

**Certificate of Service**

I, Matthew R. Friedman, certify that on this 8th day of June, 2017, I caused a copy of the foregoing Complaint, as well as a copy of the redacted version thereof electronically filed with the Commission this day, to be served by hand on the following:

Francis M. Buono  
Senior Vice President, Legal Regulatory Affairs, & Senior Deputy General Counsel  
Comcast Corporation  
300 New Jersey Avenue, NW  
Suite 700  
Washington, DC 20001

Michael D. Hurwitz  
Willkie Farr & Gallagher LLP  
1875 K Street, NW  
Washington, DC 20006-1238  
*Counsel to Comcast Corporation and  
Comcast Cable Communications, LLC*

  
Matthew R. Friedman

**Exhibit List**

<b>Exhibit #</b>	<b>Description</b>
<b>1</b>	Declaration of Kevin Adell, President and CEO, The Word Network
<b>2</b>	Declaration of Bishop Charles H. Ellis, III
<b>3</b>	Expert Report of Harold W. Furchtgott-Roth
<b>4</b>	Expert Report of Mark R. Fratrik and William Redpath
<b>5</b>	TWN's February 6, 2017 Pre-Filing Notice Letter
<b>6</b>	Comcast's February 16, 2017 Response to TWN's Pre-Filing Notice Letter
<b>7</b>	TWN's May 19, 2017 Supplemental Pre-Filing Notice Letter
<b>8</b>	Comcast's May 26, 2017 Response to TWN's Supplemental Pre-Filing Notice Letter
<b>9</b>	November 11, 2016 Letter from Jennifer Gaiki, Senior Vice President of Content Acquisition, Comcast Cable Communications, to Kevin Adell, President and CEO, The Word Network

# EXHIBIT 1

**Declaration of Kevin Adell**

I, Kevin Adell, hereby declare:

**Background**

1. I have served as the President and Chief Executive Officer of The Word Network (“TWN”) since its founding in 2000. In this role, I oversee TWN’s distribution, develop the network’s programming strategy, and I interact with TWN’s ministry programmers. I am intimately familiar with all aspects of TWN’s day-to-day operations and long-term strategies.

2. I have more than twenty-five years of experience in the cable and broadcasting industries. I founded WADL, an independent broadcast station, in 1988, and I developed it into a mainstay of the Detroit broadcasting marketplace. I also have launched numerous cable channels and am experienced in negotiations for carriage with MVPDs of all sizes. Additionally, I run Detroit’s WFDF 910 AM Superstation, a talk radio station targeting an African American audience. Through this experience, I have gained extensive knowledge of the cable and broadcast industries, with a particular focus on African American audiences.

**History of TWN**

3. I launched TWN with my father, Franklin Z. Adell, in February of 2000 to provide original, African American-oriented ministry programming to viewers in the United States and around the world. TWN is an independent network, unaffiliated with any MVPD or other video programming vendor. Today, TWN receives broad distribution by most major multichannel video programming distributors (“MVPDs”), including DIRECTV, AT&T, Spectrum/Charter, Verizon, and Cox. TWN now reaches over 93 million homes in the United States and hundreds of millions of viewers worldwide. Millions of viewers rely on TWN for their spiritual edification and life-improvement programming.



4. TWN is popular. It is the most watched network for African American religious programming. This popularity is fueled by the high-quality, original ministry programming it provides. Throughout its seventeen-year existence, TWN has substantially and continuously improved the quality of its programming, distribution systems, and facilities. Such improvements have transformed TWN into a top-tier religious programming network, and the most sought-after destination for African American religious programming.

5. TWN got its start when DIRECTV agreed to carry TWN nationally in 2000, and it received distribution on Comcast later that year. It is now also carried by Spectrum/Charter, Cox, CenturyLink, Cablevision, AT&T, Suddenlink, Verizon, and other MVPDs.

6. TWN is the world's largest African American religious network. TWN exclusively features some of the nation's most popular religious programming, including: Rejoice In The Word with Bishop George Bloomer; Empowerment Encounter with Dr. Jamal Bryant; Let The Healing Begin with Bishop Greg Davis; Medina Pullings LIVE; 120 LIVE with Rod Parsley; The Shift with Dr. Taketa Williams; The Gospel According to Dorinda; Greg Davis LIVE; ManCave with KD Bowe; The Tim & Breyln Show; Heather Lindsey Show; Your Season of Change with David Alexander Bullock; Fresh Wind with Sandra Riley. TWN recognizes that music is a large part of the Christian experience, and it offers a lineup of gospel artists, interviews, videos and musical specials featuring artists such as Marvin Sapp, Kirk Franklin, Mary Mary, Donnie McClurkin, Hezekiah Walker, J Moss, Deitrick Haddon, CeCe Winans and Byron Cage, and newcomers such as Wess Morgan and VaShawn Mitchell.

7. TWN's audience is primarily comprised of the African American religious community. Our viewer base is mostly women, ages 25–70, in both urban and rural areas.

8. TWN constantly seeks new ways to engage its audience. Our programming plays an important part in people's spiritual lives. As part of an effort to engage viewers in multiple media, TWN made its programming available via streaming on its website in August 2013, and through an online DVR system allowing access to the last 48 hours of TWN programming in January 2017. TWN programming is also available through TWN's smart phone app. Each day, TWN receives approximately {REDACTED} live stream viewers, and it streams approximately {REDACTED} of data a month. TWN also works hard to engage its viewers on other social media platforms by posting daily on its website, Facebook, Twitter, Instagram, and YouTube. Every month, TWN receives over 70,000 unique hits on its website. It has 956,800 Facebook followers, 41,700 Twitter followers, 75,000 Instagram followers, and 12,400 YouTube followers. TWN's viewers heavily engage TWN on Facebook, averaging 1,800 likes and 1,000 new followers per day. TWN's viewers follow TWN closely and appreciate its content.

9. TWN also serves a global audience. TWN is available in over 200 countries and reaches millions of viewers in Europe, Africa, Asia, Australia, and the Americas. TWN is distributed to one million men and women serving in the United States Armed Forces in over 65 countries. TWN also is available to thousands of air travelers daily through "In Flight" services on selected airlines.

10. TWN has invested heavily in the production quality of its content, which gives TWN a significant advantage in terms of signal and production quality over any other African American religious network. Since its founding, TWN has continually improved the quality of its content and distribution systems. In May of 2012, TWN completed a multimillion dollar state-of-the-art expansion on the campus of its international headquarters. The expansion included production facilities, editing suites, green rooms, an executive conference room, and

additional offices, in addition to a television studio with the latest in cutting-edge technology. The television studio is capable of handling church services, telethons, live performances, and interviews. TWN has the ability to bring the studio to the people with mobile technology, producing remote programming via a state-of-the-art production truck. All of these tools allow TWN to partner with its programmers to create the best programming with significant production quality. This superior production quality allows us to attract the most popular ministry programming.

11. TWN also has invested to enable our featured programmers to broadcast from major events to millions of homes worldwide, including major national conventions and conferences such as the Full Gospel Baptist Church Fellowship, Pentecostal Assemblies of the World Convention, the Church of God in Christ Holy Convocation, the Pastors & Church Leaders Conference, International Faith Conference with Dr. Bill Winston, Watch Night Service with Dr. E. Dewey Smith, 7 Last Words with Dr. Jamal Bryant, and Strategies Conference with Bishop I.V. Hilliard. This programming allows people from all over the country to experience these events, where previously only those who had the ability to travel could participate. This programming is especially valuable to the old and disabled, who cannot easily attend religious and inspirational services. No other network provides the scope and scale of coverage of these events.

12. In recognition of our popularity, high-quality of production, and audience loyalty, we are able to command premium fees from religious programmers, relative to any other African American religious network. For example, TWN charges programmers between {REDACTED} and {REDACTED} for a 30-minute slot during the day, depending on the time of the day. In contrast, the Impact Network {REDACTED}

[REDACTED]

[REDACTED]

[REDACTED] }.

### **The Impact Network**

13. I am familiar with the Impact Network and its general quality, programming, and distribution. The Impact Network is available on Comcast, DISH Network, DIRECTV, and Spectrum/Charter. The Impact Network claims to reach approximately 75 million people.

14. Although TWN has many preachers and a variety of programming formats, the Impact Network's programming is narrower than TWN's, focusing substantially on Bishop Wayne T. Jackson. The Impact Network's production quality is poor, because it distributes its video feed over the Internet, rather than through a satellite uplink. This results in a substantially poorer video quality than TWN.

15. While TWN has popular preachers who have national and global audiences, the Impact Network features less popular preachers. This difference in the popularity of the preachers means that the Impact Network has a smaller audience and does not command the same level of national attention that TWN does.

### **Comcast's Conduct**

16. On November 11, 2016, Jennifer Gaiki, Senior Vice President of Content Acquisition for Comcast Cable, notified me in a two-sentence letter of its intent to eliminate distribution of TWN on 456 Comcast systems, reducing TWN's distribution on Comcast from approximately 12 million to 5 million subscribers. The letter informed me that distribution would be eliminated in key African American markets such as Washington, D.C., Philadelphia, and Baltimore, as well as major metropolitan areas such as Pittsburgh, Houston, Salt Lake City,

San Francisco/Oakland, Denver, Boston, and Minneapolis/St. Paul. Later, Comcast would also inform me that TWN would be replaced on each system by the Impact Network, which also features African American ministry programming. On or around January 12, 2017, Comcast eliminated TWN on these systems, and replaced it with the Impact Network.

17. Comcast's decision to reduce distribution of TWN does not make any business sense. Comcast does not pay TWN a per subscriber fee for distribution. Comcast also benefits substantially from the broad carriage of TWN's valuable, original programming. Because Comcast carries TWN on its expanded basic tier or a similar tier that is less penetrated than basic, TWN viewers pay Comcast a fee over the basic cable rate to access the tier on which TWN is carried.

18. Prior to the January 2017 reduction in distribution, TWN and Comcast had a good relationship. Comcast distributed TWN to about half of its subscriber base, roughly 12 million subscribers. Today, Comcast distributes TWN to roughly 5 million subscribers, which is less than a quarter of Comcast's subscriber base.

19. Not only does TWN not charge Comcast for carriage, it pays Comcast to distribute TWN, in the form of fees for transport. These fees are {REDACTED}. The fees have not changed since Comcast reduced TWN's distribution.

20. TWN pays Comcast for a high-quality satellite uplink service in order to provide the highest-quality signal to our audience.

21. Comcast's action happened with no prior warning or any signs that Comcast was unhappy with TWN. Comcast had never expressed any concern that it viewed TWN's programming as anything but excellent.

22. Comcast's reduction of distribution harmed TWN. TWN lost access to 7 million viewers as a direct result of Comcast's conduct, including viewers in key African American markets. Many of these viewers reside in television markets with limited MVPD alternatives for accessing TWN, depriving them of access to programming that formed a core part of their spiritual lives.

23. TWN also has suffered financially. As a result of the reduction in distribution, some TWN preachers moved their programming to different religious networks, and TWN has been { [REDACTED]  
[REDACTED]  
[REDACTED] } TWN also has sustained substantial costs fighting Comcast's unlawful actions.

24. Ms. Gaiski's November 22, 2016 letter was the first sign of any trouble in our relationship. Had Comcast made me aware of any problem or concerns, I would have worked with them to resolve any issue.

25. Comcast has been inflexible and unwilling to work to resolve this dispute. The reduction in carriage was an unexpected development in our relationship, and Comcast has refused to provide any good-faith reason why it reduced TWN's carriage. Its behavior demonstrates to me that it is not making an informed, logical business decision. I repeatedly tried to contact Jennifer Gaiski, Senior Vice President of Content Acquisition for Comcast Cable, to understand why Comcast had reduced our carriage and to try to explore a solution. Instead of offering any tangible explanation for the reduction in distribution, Ms. Gaiski told me that Comcast was reducing our distribution "Because we are Comcast, and we can."

26. In an effort to restore our carriage, I finally was able to secure a meeting with Comcast in Philadelphia on November 22, 2016. John Mattiello, Director of Marketing and Affiliate Relations for TWN, joined me in the meeting with Ms. Gaiski and her team.

27. Based on my experience in the cable industry, it was apparent that Ms. Gaiski and her team were unprepared for the meeting and lacked familiarity with both the ministry programming genre and the market in which TWN operates. This lack of familiarity and lack of preparation demonstrated further that Comcast did not base its decision on a sound business justification.

28. In the meeting, I described the types of content TWN provides, how TWN benefits the African American community, how it benefits Comcast and other MVPDs, its prominence in the African American religious community, and why TWN's viewers are loyal. Ms. Gaiski did not meaningfully engage in this conversation or seem to have any understanding of the ecosystem. She stated that she could not tell TWN apart from other religious networks. She also laughed during a portion of the video presentation featuring a Pentecostal African American funeral ceremony involving dancing, where she pointed to the images and exclaimed: "Look at them dance! Look at them dance!" Her remark was offensive.

29. When I pressed Ms. Gaiski to explain why Comcast had reduced TWN's carriage without any warning, Ms. Gaiski presented conflicting explanations for why Comcast reduced TWN's carriage. She stated that TWN did not perform as well as it should, but she refused to explain what metric she used to make her decision or list those markets in which TWN supposedly did not adequately perform. To this day, Comcast has not presented me with any evidence supporting this claim and has not given me any indication of what TWN could do to improve in Comcast's view.

30. In an effort to be a good partner, I offered to engage in an advertising campaign, promotions, and other efforts to improve TWN's brand and address any viewership issues. Ms. Gaiki expressed no interest.

31. In my experience, her response demonstrated that her reference to TWN's poor performance was simply a pretextual, post hoc excuse, because in fact she had not conducted any serious analysis or due diligence of TWN or the market for African American religious programming.

32. Ms. Gaiki also demanded exclusive control over TWN's digital rights at this meeting. I believe these rights to be worth at least {REDACTED} of the value of TWN. TWN's digital rights had never been an issue of negotiation before and Comcast had never shown any interest in them before this meeting. This demand came out of nowhere. I have participated in many carriage negotiations before and this demand was unique. I informed Comcast that TWN streams its content on our own website and we do not license our digital rights to any distributors.

33. Comcast was not willing to negotiate over the demand for digital rights.

34. Based on my twenty-five years of experience in the programming industry, I recognized that Comcast's attempt to gain TWN's digital rights was an implicit threat that Comcast would not restore TWN's previous distribution unless we gave Comcast a financial interest in the network.

35. My experience and judgment were confirmed when Comcast terminated negotiations and informed me that its policy is to not carry a network unless it grants Comcast its digital rights. I reiterated that TWN would not part with its exclusive worldwide rights, as TWN uses them as part of its business model. In response, Comcast refused to negotiate any further,



making it obvious that negotiations would not proceed until TWN agreed to grant Comcast its online digital rights.


36. Comcast has continued to give conflicting reasons why it reduced TWN's carriage. I was told later by Bishop Charles Ellis III that Comcast claimed I was a bad partner because I had never visited Comcast's headquarters. Comcast has never expressed a desire that I visit Comcast's headquarters, but I am willing to do so.

37. The reduction in carriage has directly interfered with our investments and plans for expansion. Comcast's decision directly undercuts TWN's heavy investments in increasing the quality and reach of its programming, and it deprives every Comcast customer on the removed systems of our high-quality programming.

38. Our viewers have been upset by the loss of TWN in their markets. Since Comcast reduced TWN's distribution, TWN has received a substantial increase in calls complaining about the removal of TWN from their systems. TWN viewers also have complained about Comcast's actions on social media.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing declaration is true and correct.

Executed on June 8, 2017.

  
Kevin Adell  
President and Chief Executive Officer  
Word Network Operating Company, Inc.  
d/b/a The Word Network

# EXHIBIT 2

**Declaration of Bishop Charles H. Ellis, III**

I, Bishop Charles H. Ellis, III, hereby declare:

**Background**

1. For over two decades, I have served as a religious and civic leader for African Americans. Since 1996, I have served as the Senior Pastor of the 6,500-member Greater Grace Temple in Detroit, Michigan. In this role, I act as spiritual adviser to my congregation, leading them in community worship through weekly sermons and engaging in one-on-one counseling.

2. I also oversee Greater Grace Temple's non-religious functions. I serve as Founder and President of both the GGT Non-Profit Housing Corporation, which oversees low income housing for seniors, and the Master's Commission, a non-profit serving at-risk youth. I also spearheaded the development of Greater Grace Temple's \$36 million, state-of-art, twenty-acre facility. Opened in 2002, this facility houses over 300 ministries serving the non-religious needs of the African American community, including:

- Over 100 housing units for seniors and families;
- Two charter schools for Grades K-8;
- A Montessori day care center;
- A travel agency; and
- A funeral home.

I additionally serve as a board member of the Detroit Zoological Society, as well as the Detroit Medical Center.

3. In 2010, I was elected as the Presiding Bishop for the 1.3 million-member Pentecostal Assemblies of the World ("PAW"), the world's oldest and second largest Pentecostal organization. As the leader of PAW, I govern over an eighty-eight member board of bishops and

elected officers, as well as oversee the Diocese of South Carolina's forty-seven churches. In each of these roles, I regularly engage with members of the African American community, who share with me their concerns, desires, and beliefs.

4. Since 2000, I have served as a featured programmer on The Word Network ("TWN"). My ministry program is regularly featured during the 8pm to 8:30pm Eastern Time slot, five to seven days per week. As a featured programmer, I have developed an intimate understanding of (1) the importance of TWN to the African American religious community; and (2) the quality of TWN's programming and technological capabilities. I have also had several interactions with Comcast in the wake of its decision to substantially eliminate distribution of TWN on its systems.

5. Additionally, through my roles as an African American minister and civic leader, I have developed a familiarity with the Impact Network and the quality of its programming. I also know the founder of the Impact Network, Bishop Wayne T. Jackson.

**The Word Network is a Popular, High-Quality Programming Network with Substantial Value to the African American Community**

6. The Word Network is an indispensable asset to African Americans across the globe. Without question, it is the leading network in the country for African American religious programming.

7. TWN provides high-quality ministry programming that is popular with African Americans of all ages. Indeed, TWN exclusively features some of the country's most popular ministers, and it puts forward a strong, ministry-focused television lineup twenty-four hours a day, seven days a week. Some featured ministers have congregations in the hundreds of thousands, and they attract viewers from around the United States and the world. TWN additionally features a diverse range of unique ministry programming that targets, and is popular

with, millennials. TWN also serves as an industry leader in live religious programming, which is often filmed and broadcast from its headquarters outside of Detroit, Michigan.

8. Second, TWN provides industry leading, state-of-the-art facilities through its substantial and ongoing investments in its cameras, production equipment, studio, and other facilities that allow it to be broadcast with a network quality superior to any other African American religious network. No religious programmer exceeds the quality of TWN's network or facilities.

9. The quality of TWN's programming has caused TWN to develop a loyal following, and it has become an invaluable asset to the African American community. Its value and credibility among the African American community is unmatched.

10. Often, TWN's viewers rely on TWN as an alternative to attending church in person. This is especially true for older viewers, or viewers residing in colder climates, where attending in person is difficult.

11. TWN's brand, quality of programming, and loyal viewing audience is the reason why the African American community views TWN as the most important religious network on television.

12. I have known TWN to be excellent in everything it does. It constantly invests in its facilities. Last year, it launched a new, state-of-the art production facility.

13. In my opinion, there is no reason why a major cable company would contemplate reducing distribution of TWN.

**Replacing The Word Network with the Impact Network Does Not Remedy the Harm Caused to TWN Viewers on the Removed Systems**

14. Comcast's removal of TWN on many of its systems prevents Comcast subscribers from accessing TWN through their cable service, and it deprives these subscribers of

the substantial value TWN provides. Replacing TWN with the Impact Network does not provide a comparable substitute.

15. The Impact Network's programming is inferior to TWN's programming. The Impact Network features less-popular ministers than TWN, with smaller congregations. The Impact Network's programming is also narrower than TWN's programming, focusing substantially on the ministry of its founder, Bishop Wayne T. Jackson.

16. The quality of the Impact Network's video is substantially inferior to TWN. Where TWN's video quality looks as good as any major cable network, the Impact Network's video quality is poor.

17. The quality difference between TWN and the Impact Network is reflected in the substantial difference in the price charged per half hour on each network. TWN charges ministers such as me a substantially higher fee than what the Impact Network charges. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } Additionally, while some preachers featured on the Impact Network also appear on TWN, I have chosen not to be featured on the Impact Network because of my concerns with the poor quality of the Impact Network's distribution and video. Other preachers featured on TWN have similarly decided to refrain from being carried on the Impact Network.

#### **Interactions with Comcast**

18. I also had several conversations with Comcast representatives after Comcast notified TWN of its decision to reduce its distribution.

19. It was clear from those interactions that Comcast did not understand the market for African American religious programming. Comcast did not seem interested in learning about this market, nor gathering critically important information regarding what viewers of ministry programming value.

20. Immediately after Mr. Adell notified me of Comcast's decision to reduce distribution of TWN, I called Jennifer Gaiski, Vice President of Content Acquisition for Comcast Cable, to try to understand why Comcast would make such a decision. I left a message with her office, but she never returned my call.

21. Instead, I received a call from Antonio Williams, a director in Comcast's government affairs department. I later learned that Mr. Williams does not have authority to make programming decisions. Based on our conversations, I believe he does not understand religious programming, nor does he have any meaningful understanding of TWN or the Impact Network. In fact, he admitted he had not watched either.

22. During this conversation, I asked Mr. Williams why Comcast was replacing TWN with the Impact Network. Mr. Williams responded that TWN had not been a good partner for Comcast. He claimed that TWN's programming was mediocre, and that Mr. Adell had not visited Comcast's headquarters. Mr. Williams further stated that Comcast believed replacing TWN with the Impact Network on these systems would give the African American community more options, and that the Impact Network is improving, while TWN is declining.

23. Based on my deep understanding of the market for African American religious programming and TWN, I knew that none of Mr. Williams' contentions was true. He

never provided any evidence to support his assertions about the quality of the Impact Network compared with TWN. And, Mr. Williams admitted he had never watched either channel.

24. A subsequent call occurred, which included Mr. Williams, myself, Reverend Jesse Jackson, Sr., and Bishop Paul Morton, just prior to Christmas 2016. The congregations for each participating minister constitute some of the largest African American congregations in the country. Mr. Williams was the only Comcast representative on the call.

25. During this call, we explained to Mr. Williams the harm to African American ministers that directly stemmed from Comcast's decision to reduce TWN. We noted TWN's prominence in the African American religious community, and its status as the leading network for African American religious programming. Mr. Williams did not provide any response to these concerns. Instead, he concluded the call by stating he would relay the expressed concerns to his superiors at Comcast. We have not heard back from Mr. Williams or any Comcast representative.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing declaration is true and correct.

Executed on June 8, 2017.

  
BISHOP CHARLES H. ELLIS, III



# EXHIBIT 3

June 7, 2017

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Expert Report of Harold W. Furchtgott-Roth

---

## I. INTRODUCTION

1. My name is Harold W. Furchtgott-Roth. My business address is: 1200 New Hampshire Ave., N.W., Suite 300, Washington, DC 20036. I have been retained by counsel for The Word Network (“TWN”) as a media industry and economics expert. It is my view that TWN is a video programming vendor within the meaning of 47 C.F.R. § 76.1300(e), as it produces and provides religious television programming to multichannel video programming distributors (“MVPDs”). I have been asked to address the following questions:

- a. From a communications policy perspective, is the Comcast-NBCU Order still in effect?<sup>1</sup>
- b. Is TWN valuable to Comcast?
- c. Do digital rights in TWN have value, and would assignment of those digital rights constitute attribution in TWN?

## II. QUALIFICATIONS

2. I am president of Furchtgott-Roth Economic Enterprises, an economic consulting firm that I founded in 2003. I am also a Senior Fellow at the Hudson Institute where I founded the Center for the Economics of the Internet in 2011. In addition, I am an adjunct professor of law at Brooklyn Law School where I have taught communications law since 2014. Since 2009, I have served on the Department of Commerce’s Spectrum Management Advisory Committee.

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<sup>1</sup> I am not a lawyer, and I present my views about the enforceability of the Comcast-NBCU Order from my perspective as a former FCC commissioner and observer of the FCC for more than two decades.

3. I have consulted extensively in the media and broadcast industries. I have been retained as an expert witness in court proceedings and in arbitrations including both as an economic expert and as an expert in media industries.

4. I was a Commissioner of the Federal Communications Commission (“FCC” or “Commission”) from November 1997 through the end of May 2001. In that capacity, I participated in all decisions of the Commission, including those affecting the broadcast and cable industries.

5. From June 2001 through March 2003, I was a visiting fellow at the American Enterprise Institute for Public Policy Research (“AEI”) in Washington, DC. While at AEI I wrote a book about my experience at the FCC implementing the Telecommunications Act of 1996.

6. From 1995 to 1997, I was chief economist of the House Committee on Commerce. One of my responsibilities was to serve as a principal staff member helping to draft the Telecommunications Act of 1996, which modified federal law affecting broadcasting and cable services, among other industries.

7. From 1988 to 1995, I served as a senior economist at Economists Incorporated, an economic consulting firm where I worked on econometric matters in regulatory, antitrust, and commercial litigation cases. These cases included many matters in the broadcast and cable industries.

8. My academic research concerns economics and regulation. I am the author or coauthor of four books: *A Tough Act to Follow?: The Telecommunications Act of 1996 and the Separation of Powers* (Washington, DC: American Enterprise Institute), 2006;

*Cable TV: Regulation or Competition*, with R.W. Crandall, (Washington, DC: The Brookings Institution), 1996; *Economics of A Disaster: The Exxon Valdez Oil Spill*, with B.M. Owen, D.A. Argue, G.J. Hurdle, and G.R. Mosteller, (Westport, Connecticut: Quorum books), 1995; and *International Trade in Computer Software*, with S.E. Siwek, (Westport, Connecticut: Quorum Books), 1993. I have authored or coauthored dozens of other publications.

9. I received a Ph.D. in economics from Stanford University and an S.B. in economics from the Massachusetts Institute of Technology.
10. A copy of my curriculum vitae, including a complete list of my testimonies and a list of all publications that I have authored, is attached hereto as Appendix A.
11. My opinions and the bases for my opinions are contained in this report and the attached exhibits. My work in this matter is ongoing, and I will consider additional information that becomes available after this report is submitted. To the extent that this additional information alters my opinions, I may supplement or revise my opinions at a later date.

### III. SUMMARY OF OPINIONS

12. I have reviewed various documents and information related to the questions posed by counsel. Based on this information, on my experience in the media industries, on my professional experience including as an FCC commissioner, and on my training and experience as an economist, I reach the following opinions:

- a. From a communications policy perspective, the Comcast-NBCU Order is still in effect, and TWN may avail itself of those provisions.

- b. Carriage of TWN is valuable to Comcast, and there is no obvious business reason for Comcast to reduce carriage.
- c. Digital rights in TWN have value, and the assignment of those digital rights could constitute attribution in TWN.

**IV. FROM A COMMUNICATIONS POLICY PERSPECTIVE, THE COMCAST-NBCU ORDER IS STILL IN EFFECT, AND TWN MAY AVAIL ITSELF OF THOSE PROVISIONS**

13. Comcast and NBC Universal applied to the FCC for permission to transfer licenses.<sup>2</sup> The FCC approved the application but with substantial conditions.<sup>3</sup> The Commission stated: “Except as expressly stated, these Conditions shall remain in effect for seven years following the date of this Order,” or January 2018.<sup>4</sup> Violations of the merger conditions would be treated as a violation of the Merger Order.<sup>5</sup>

14. The Commission is aware of the binding nature of merger conditions. The Commission may take affirmative actions to repeal a merger condition. The Commission recently repealed some merger conditions from the Charter-Time Warner

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<sup>2</sup> Applications and Public Interest Statement of General Electric Company, Transferor, to Comcast Corporation, Transferee (Jan. 28, 2010), as amended on May 4, and November 3, 9, 17, 18 and 29, 2010 (together, the “Application”).

<sup>3</sup> Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer of Control of Licensees, *Memorandum Opinion and Order*, 26 FCC Rcd. 4238 (2011) (“*Comcast-NBCU Order*”). I have long held the view that FCC merger conditions are ill-advised and beyond the necessary scope of Commission authority. While I personally prefer for one of the standard federal antitrust agencies to address the anticompetitive concerns of a proposed merger, it was the FCC, not one of the antitrust agencies, which actually imposed specific conditions on the merger through a formal Order. Those conditions remain in place today. The Commission could have subsequently removed some or all of these merger conditions, but it has not chosen to do so.

<sup>4</sup> *Id.* at 4382, Appendix A, Condition XX.

<sup>5</sup> *Id.* at 4382, Appendix A, Condition XVIII.

merger.<sup>6</sup> I am not aware that the Commission has repealed conditions from the Comcast-NBCU merger.

15. Some of the Comcast–NBCU merger conditions pertain to carriage by Comcast of independent programming such as TWN.<sup>7</sup> As the Commission stated in the Introduction to the Order approving the merger:

*Access to Comcast’s Distribution Systems.* In light of the significant additional programming Comcast will control—programming that may compete with third-party programming Comcast carries on its MVPD service—we require that Comcast not discriminate in video programming distribution on the basis of affiliation or non-affiliation with Comcast-NBCU. Moreover, we require that, if Comcast “neighborhoods” its news (including business news) channels, it must include all unaffiliated news (or business news) channels in that neighborhood. We also adopt as a condition of the transaction Comcast’s voluntary commitment to provide 10 new independent channels within eight years on its digital tier.<sup>8</sup>

16. The Commission was concerned about incentives for Comcast to choose not to carry unaffiliated programming, or discriminate against such programming when making carriage decisions:

We agree that the vertical integration of Comcast’s distribution network with NBCU’s programming assets will increase the ability and incentive for Comcast to discriminate against or foreclose unaffiliated programming. We conclude that the adoption of a non-discrimination requirement, a condition to make ten channels available to independent programmers over a period of time, and a narrowly tailored neighborhooding requirement will mitigate any potential public interest harms.<sup>9</sup>

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<sup>6</sup> Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations, *Order on Reconsideration*, MB Docket No. 15-149, FCC 17-34 (Apr. 3, 2017).

<sup>7</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4355-82.

<sup>8</sup> *Id.* at 4241 ¶ 4.

<sup>9</sup> *Id.* at 4282 ¶ 110.

17. The Commission discussed its concerns with the post-merger Comcast having an incentive to (1) discriminate against unaffiliated programming and (2) discriminate in favor of affiliated programming. In discussing the former, the Commission noted:

Based on the record, and consistent with the concerns about vertical integration addressed by Congress in Section 616 of the Cable Act, we find that the combination of Comcast, the nation's largest cable service provider and a producer of its own content, with NBCU, the nation's fourth largest owner of national cable networks, will result in an entity with increased ability and incentive to harm competition in video programming by engaging in foreclosure strategies or other discriminatory actions against unaffiliated video programming networks. Comcast's extensive cable distribution network affords it the ability to use its video distribution market position to harm other competing video programming firms and harm competition in video programming. ... Comcast's large subscriber base potentially allows it to limit access to customers for any network it wishes to disadvantage by either denying carriage or, with a similar but lesser competitive effect, placing the network in a less penetrated tier or on a less advantageous channel number (making it more difficult for subscribers to find the programming).<sup>10</sup>

That is, the Commission clearly was concerned that Comcast could use its market power for program carriage to disadvantage unaffiliated networks. In the context of the TWN complaint, it is difficult to read the Commission's 2011 language above and not see that it could easily apply to Comcast's behavior towards TWN in 2016 and 2017.

18. The Commission discussed at length Comcast's incentives to favor its own programming.<sup>11</sup> Comcast-NBCU agreed to several conditions, including adding "at least ten new independently owned and operated programming services to the digital (D1) tier over the eight years following closing of the transaction."<sup>12</sup> But the conditions offered by Comcast-NBCU were not sufficient for the Commission. As the Commission stated:

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<sup>10</sup> *Id.* at 4284-86 ¶ 116.

<sup>11</sup> *Id.* at 4285-87 ¶¶ 118-121.

<sup>12</sup> *Id.* at 4287 ¶ 120.



Although these commitments are helpful, they are not sufficient to allay our concerns. We believe it is in the public interest to adopt additional remedies regarding program carriage disputes. Specifically, we condition the approval of this transaction on the requirement that Comcast not discriminate in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection of, or terms or conditions for, carriage, including in decisions regarding tiering and channel placement. *If program carriage disputes arise based on this non-discrimination condition, it will be sufficient for the aggrieved vendor to show that it was discriminated against on the basis of its affiliation or non-affiliation. A vendor proceeding under this condition will not need to also prove that it was unreasonably restrained from competing, as it would under our program carriage rules. This non-discrimination requirement will be binding on Comcast independent of the Commission's rules, and will extend to non-discriminatory treatment in placement within search menus as well as channel placement. We also prohibit retaliation for bringing a program carriage complaint.*<sup>13</sup>

19. Stated differently, the FCC imposed merger conditions that go far beyond, and in addition to, the ordinary protections of Section 616. In a carriage dispute with Comcast, a programmer such as TWN can and should avail itself of the conditions imposed by the FCC's Comcast-NBCU Order.

## **V. CARRIAGE OF TWN IS VALUABLE TO COMCAST, AND THERE IS NO OBVIOUS BUSINESS REASON FOR COMCAST TO REDUCE CARRIAGE**

20. Comcast has carried TWN since 2000. I have seen no evidence that Comcast was irrational in its business decisions regarding TWN between 2000 and 2016. Comcast carried TWN presumably because such carriage was valuable to Comcast. It is my understanding from TWN that between 2000 and 2016 Comcast never once indicated to TWN any dissatisfaction with carriage of TWN. I have also seen no evidence of a decrease in the quality of TWN or any other external factor in 2016 that would reasonably lead to a Comcast decision in 2016 for a decrease in TWN carriage. Other MVPDs carried TWN before 2016 and continued to do so after 2016.

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<sup>13</sup> *Id.* at 4287 ¶ 121 (emphasis added) (footnotes omitted).

21. I have reviewed the expert report of Mark Fratrik and William Redpath.<sup>14</sup> Their economic methods and analysis are reasonable. I concur in their conclusions.

22. Comcast pays for much of its programming. In contrast, Comcast does not pay for TWN, and TWN pays for transporting the signal to Comcast.<sup>15</sup> Thus, any assessment that Comcast might have made about the benefits and costs of TWN carriage should have reflected the absence of cost to Comcast of carriage.

23. Comcast and other major MVPDs have both the capacity and the financial incentive to carry hundreds of channels. Roughly the top-100 rated cable networks have a viewership rating of 0.1 or more.<sup>16</sup> TWN is not among those top-100-rated networks, but Comcast carries many networks, including TWN, that are not among the top-100. Below, I examine many reasons that carriage of TWN by Comcast made economic sense from 2000-2016 and continues to do so today.

- a. *Substantial viewership through MVPDs.* As reviewed in the Fratrik and Redpath Report, TWN has substantial MVPD viewership, and that viewership did not diminish in 2016.<sup>17</sup>
- b. *Substantial viewership and following online.* TWN has viewership not merely through MVPDs such as Comcast but also online and through social media. Online viewership not only substantially expands the

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<sup>14</sup> Expert Report of Mark R. Fratrik and William Redpath (“Fratrik and Redpath Report”).

<sup>15</sup> Declaration of Kevin Adell ¶ 19 (“Adell Decl.”).

<sup>16</sup> See *Basic Cable Network Ranker for the Week of May 1, 2017*, <https://www.scribd.com/document/347848664/Basic-Cable-Network-Ranker-Week-of-May-1-Total-Viewers> (last visited June 3, 2017).

<sup>17</sup> Fratrik and Redpath Report ¶¶ 10-11.

potential viewership of TWN but also makes the branding of TWN more valuable to MVPDs such as Comcast seeking to attract and retain customers with well-branded networks. TWN had more than 22,000 views of “Seven Last Words” through Periscope on Good Friday this year.<sup>18</sup> TWN has nearly one million followers on Facebook, increasing by more than 1,000 per day.<sup>19</sup> TWN has 75,000 followers on Instagram and more than 41,000 followers on Twitter.<sup>20</sup> Many cable networks do not have this online brand presence that enhances the value of MVPD carriage for Comcast.

- c. *State-of-the art studios and satellite distribution.* TWN has invested substantially in its studios, satellite distribution, and the technical quality of its programming. I have visited the TWN facilities. They compare favorably with those of major cable networks.
- d. *TWN has a special recognition and status in the African-American community.* As noted in the Ellis declaration, TWN is widely recognized as a special brand, particularly in the African-American community.<sup>21</sup> Preachers widely recognized in the African-American community—such as Dr. Jamal Bryant, Bishop Greg Davis, Bishop Charles H. Ellis III, and

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<sup>18</sup> Interview with David Sheffield, Operations Manager, The Word Network (Apr. 19, 2017).

<sup>19</sup> Adell Decl. ¶ 8.

<sup>20</sup> *Id.*

<sup>21</sup> Declaration of Bishop Charles H. Ellis, III ¶ 6 (“Ellis Decl.”).

Bishop I.V. Hilliard—appear regularly on TWN.<sup>22</sup> TWN is the most widely-viewed religious network focused on the African-American community.<sup>23</sup>

e. *Substantial covariance with other available cable networks.*

Particularly for its unique programming, TWN is substantially different from other cable networks carried by MVPDs such as Comcast. From an economic perspective, TWN provides substantial covariance, or differences, with other programming carried by MVPDs such as Comcast. That covariance allows TWN to attract audiences and customers that might not otherwise be attracted to an MVPD. That covariance also allows MVPDs to place, at their discretion, TWN on premium tiers for extra revenues.

f. *Zero cost of programming to Comcast.* Finally, TWN offers its programming, including distribution costs, free of charge to Comcast.

For all of the reasons above, widespread carriage of TWN by Comcast made substantial economic sense to Comcast.

**VI. DIGITAL RIGHTS IN TWN HAVE VALUE, AND THE ASSIGNMENT OF THOSE DIGITAL RIGHTS COULD CONSTITUTE ATTRIBUTION IN TWN**

24. Digital rights in video programming have substantial and growing value. These rights include the distribution of live video programming feeds as well as the storage, archiving, search, and retrieval of video programming. As noted above, TWN has a

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<sup>22</sup> Adell Decl. ¶ 6.

<sup>23</sup> *Id.*; Ellis Decl. ¶ 6.

substantial online following through Facebook, Instagram, Twitter, and Periscope. In addition, the TWN website typically has 70,000 unique visitors per month.<sup>24</sup> Live stream viewers at the website averages {REDACTED}.<sup>25</sup>

25. In addition, the TWN website now has a 48-hour archival DVR retrieval system so that viewers may retrieve recent programming.<sup>26</sup> This service is valuable to TWN customers and competes with video retrieval services offered by MVPDs such as Comcast. This retrieval system, similar to that offered by MVPDs such as Comcast, allows consumers effectively to time-shift programming. TWN's investment in this service demonstrates its commitment to its digital platform, its digital rights, and its brand.

26. I understand that Comcast demanded in 2016 the exclusive digital rights to TWN as a condition of continued carriage of TWN on many of the Comcast systems.<sup>27</sup> Few if any major networks assign exclusive digital rights to an MVPD such as Comcast. Digital rights are an important and growing source of value to video networks such as TWN.

27. Assigning exclusive digital rights to Comcast would diminish if not entirely foreclose the online presence of TWN that the network has developed through substantial effort and investments in recent years. Exclusive control by one MVPD such as Comcast of the digital rights to TWN's video programming would interfere with the

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<sup>24</sup> Adell Decl. ¶ 8.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* ¶ 32.

distribution of such video programming to other MVPDs because TWN could not assign digital rights already assigned to Comcast.

28. Even a demand for non-exclusive digital rights would interfere with the distribution rights as a content provider such as TWN may otherwise seek (1) to retain all digital rights under all circumstances or (2) to assign them for a fee or other consideration to individual distributors. A demand by Comcast for digital rights, either exclusive or not, interferes with both of these options and with further video distribution.

29. An MVPD would be less interested in carrying programming whose digital rights were exclusively or even heavily controlled by another MPVD such as Comcast. Such interference with distribution would also conflict with the Comcast-NBCU Order that prohibits Comcast from entering into or enforcing “any agreement or arrangement for carriage on Comcast’s MVPD system that forbids, limits, or creates incentives to limit a broadcast network or cable programmer’s provision of its Video Programming to one or more OVDs.”<sup>28</sup>

30. As over-the-top (OTT) video services become more prevalent, TWN’s digital rights become even more valuable. The digital rights of TWN represent a substantial share of the value of TWN. According to the Declaration of Kevin Adell, the digital rights represent at least {REDACTED} of the value of TWN.<sup>29</sup> Exclusive ownership of those digital rights would substantially exceed the FCC’s threshold for attributable interest of an affiliate.<sup>30</sup> Even non-exclusive digital rights for a company such as Comcast with a

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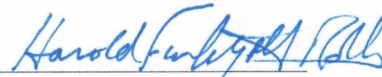
<sup>28</sup> *Comcast-NBCU Order*, 26 FCC Rcd. at 4361, Appendix A, Condition IV(B)(3).

<sup>29</sup> Adell Decl. ¶ 32.

<sup>30</sup> 47 C.F.R. §§ 76.501, 76.1301-1302.

substantial base of customers could have a value that exceeds the FCC's threshold for attributable interest of an affiliate.<sup>31</sup> Comcast's insistence on exclusive, and possibly even a demand for non-exclusive, digital rights of TWN would reflect a demand for affiliation again in conflict with Commission rules for carriage and the Comcast-NBCU Order.

I hereby declare, under penalty of perjury, that the statements set forth in this report are true and correct to the best of my knowledge, information, and belief, formed after reasonable inquiry.



Harold Furchtgott-Roth  
June 7, 2017

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<sup>31</sup> *Id.*

# APPENDIX A



## Harold W. Furchtgott-Roth

### Office Address

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Suite 300  
1200 New Hampshire Ave., NW  
Washington, DC 20036  
(202) 776-2032  
hfr@furchtgott-roth.com

### Home Address

2705 Daniel Road  
Chevy Chase, MD 20815  
(301) 229-3593

### Experience

Furchtgott-Roth Economic Enterprises, President  
(2003-present).

Economic consultant.

Hudson Institute, Senior Fellow, 2011-present  
Founder and Director, Center for Economics of the Internet

Brooklyn Law School, Adjunct Professor of Law, September 2014  
- present

American Arbitration Association, arbitrator, (2011-2012)  
(File No. 50 125 T 00245 11), Macquarie Terminal  
Holdings LLC v. Voting Trust of IMTT Holdings Inc. and  
IMTT Holdings Inc.)

*New York Sun*, Business columnist, (2004 – 2008).

American Enterprise Institute, Visiting Fellow  
(2001-2003).

Federal Communications Commission, Commissioner  
(1997-2001).

One of five commissioners responsible for U.S.  
communications policy, rule making, enforcement, and  
adjudication. Among other responsibilities, reviewed all  
major mergers in communications sector. For statements,  
speeches, and other information, see  
<http://www.fcc.gov/commissioners/previouscommish.html>

**Experience  
(continued)**

Committee on Commerce, U.S. House of Representatives,  
Chief Economist, (1995-1997).

One of the principal staff for the Telecommunications Act  
of 1996, Balanced Budget Act of 1995, and electricity  
deregulation legislation for the 105th Congress.

Economists Incorporated, Senior Economist (1988-1995).

Center for Naval Analyses, Research Analyst, (1984-1988).

Stanford University, Research Assistant, and Teaching Assistant  
for public finance, (1980-1983).

U.S. Department of Energy, Conservation and Renewable  
Energy Program, Research Assistantship, (1981-1982).

Office of Management and Budget, Intern, (Summer 1980).

Congressional Budget Office, Assistant Analyst, (1978-1979).

U.S. Department of Labor, Pension and Welfare Benefits  
Program, Intern, (Summer 1977).

MIT, Center for Transportation Studies, Research Assistant,  
(1976-1978).

U.S. Senate Committee on Appropriations, Internship sponsored  
by MIT Political Science Department, (Summer 1976).

**Education**

Ph.D., Stanford University, Economics, 1986

S.B., Massachusetts Institute of Technology, Economics, 1978.

University of South Carolina, 1973-1974.

**Honors**

Awards for FCC achievements from various civic and business  
groups

Visiting Fellow, University of Warwick, (Summer 1984).

Research Fellow, Brookings Institution, (1983-1984).

National Merit Scholar, MIT, (1974).

<b>Professional Societies</b>	American Economics Association Federalist Society
<b>Boards</b>	
<b>Corporate</b>	MRV Communications, 2006-2009 Oneida Broadband, 2006-present
<b>Advisory Boards</b>	Catalyst Investors, Operating Partner, 2009 - present Telcare, Advisory Board, 2012 – present
<b>Advisory Committees</b>	National Security Agency, Member of panel to support study, “Protecting the U.S. Telecommunications Infrastructure—The Way Forward,” (2003 – 2004). Department of Commerce, Commerce Spectrum Management Advisory Committee, 2009-present
<b>Other</b>	Hudson Institute, Senior Fellow, 2007 Washington Legal Foundation Legal Policy Advisory Board Telecommunications Policy Research Conference Chairman, 2005-2007 Board member, 2004-2008.
<b>Books</b>	<i>A Tough Act To Follow? The Telecommunications Act of 1996 and the Separation of Powers</i> , (Washington, DC: AEI Press), 2006.  <i>Cable TV: Regulation or Competition</i> , with R.W. Crandall, (Washington, DC: The Brookings Institution), 1996.  <i>Economics of A Disaster: The Exxon Valdez Oil Spill</i> , with B.M. Owen, D.A. Argue, G.J. Hurdle, and G.R. Mosteller, (Westport, Connecticut: Quorum books), 1995.  <i>International Trade in Computer Software</i> , with S.E. Siwek, (Westport, Connecticut: Quorum Books), 1993.
<b>Book Chapter</b>	“Executive Interference with a Supposedly Independent Agency: The Federal Communications Commission,” chapter in <i>Liberty’s Nemesis</i> , ed. by Dean Reuter and John Yoo, Encounter Books, 2016.

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“The Economic Value of Property Rights Concepts in Spectrum, Both With and Without Licenses,” Hudson Institute Center for the Economics of the Internet, April 4, 2017, at <https://hudson.org/research/13502-the-economic-value-of-property-rights-concepts-in-spectrum-both-with-and-without-licenses>.

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# EXHIBIT 4

**THE IMPACT OF COMCAST/NBCU  
DROPPING THE WORD NETWORK ON  
SOME OF THEIR CABLE SYSTEMS**

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## TABLE OF CONTENTS

Introduction and Summary.....	1
Description of Comcast/NBCU Dropping of TWN .....	2
Comcast/NBCU Preference for Commonly Owned Networks.....	8
Potential Economic Harm to TWN .....	11
Conclusion .....	12

**THE IMPACT OF COMCAST/NBCU DROPPING  
THE WORD NETWORK ON SOME OF THEIR SYSTEMS<sup>1</sup>**

**Introduction and Summary**

1. In an unexplained action, Comcast/NBCU recently dropped The Word Network (TWN) on a number of their cable systems. One of the reasons it is hard to explain is simply that Comcast/NBCU kept TWN on many other systems. In addition, Comcast/NBCU did not provide any explanation of why it dropped TWN on some yet retained the carriage on other systems. There do not appear to be any commonalities in the types of markets (e.g., demographics) where TWN was dropped and where it was retained. Finally, since Comcast/NBCU does not pay TWN for that carriage, there is no obvious financial advantage for these actions, and the actions do not appear to be sound from a financial sense.

2. The impact on TWN of being dropped by Comcast/NBCU in so many markets is quite significant. While TWN remains a popular network carried by many other MVPDs, the loss of a noticeable number of subscribers—estimated to be over 7 million—has a profound impact on the profitability of TWN. Cable networks are high fixed cost types of businesses, so decreases in the number of subscribers will have an impact on its revenue and a much larger impact on the profitability of TWN.

3. The purpose of this paper is to describe that impact and the potential losses that TWN will incur. First, we describe the markets of these systems from which TWN was dropped. We next analyze the relative carriage of the networks owned by Comcast/NBCU to see if there is any

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<sup>1</sup> The qualifications and a copy of Dr. Mark Fratrik's curriculum vitae are attached as Appendix A. The qualifications of William Redpath are attached as Appendix B.

preference being shown. We then discuss the potential economic harm TWN might face given the decrease in its carriage.

4. When all the relevant information is reviewed, the situation surrounding the dropping of TWN from certain Comcast/NBCU systems still remains very murky. There is “no rhyme nor reason” for which systems were included on the dropped or retained list, especially when compared to instances where Comcast increased distribution of its struggling affiliated networks. What is clear, however, is that the decrease in coverage could lead to noticeable economic harm to TWN.

### **Description of Comcast/NBCU Dropping of TWN**

5. Comcast/NBCU notified TWN of its intention to drop its carriage on 456 of its systems effective January 12, 2017.<sup>2</sup> In total, this reduced TWN subscribers by over seven million.<sup>3</sup> Comcast/NBCU replaced TWN with the Impact Network on most of these dropped systems, a network that has similar type of programming as TWN but is of inferior quality in terms of production attributes and other factors.<sup>4</sup> TWN is the most widely distributed religious network targeting African American viewers, and can, as a result, charge the highest rates for programmers trying to reach these audiences.<sup>5</sup>

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<sup>2</sup> Declaration of Kevin Adell ¶ 16 (“Adell Decl.”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* ¶¶ 14, 16.

<sup>5</sup> *Id.* ¶ 12.

6. What is particularly surprising, given TWN's popularity in the African American community, is that Comcast/NBCU dropped TWN from systems that have large African American populations, a target demographic group for much of the TWN programming. In four of the largest markets, the African American population exceeds {REDACTED} as shown in the following table.

Table 1 – TWN Dropped Large Markets & Markets' % African American Population		
Market Rank	Market	% of Population African American
4	Philadelphia, PA	{REDACTED}
7	Washington, DC	{REDACTED}
8	Houston, TX	{REDACTED}
26	Baltimore, MD	{REDACTED}

Source: BIA/Kelsey, Media Access Pro™<sup>6</sup>

7. At the same time, however, Comcast/NBCU retained TWN on many of its other systems in markets with smaller percentages of African American populations. In fact, there are {REDACTED} markets in which Comcast/NBCU is retaining TWN on their cable systems with smaller percentages. Table 2 shows these markets.

<sup>6</sup> *Media Access Pro*, BIA Kelsey, <http://media.biakelsey.com/MAPro/> (last visited June 7, 2017).

Table 2 – TWN Retained Markets & Markets' % African American Population		
Market Rank	Market	% of Population African American
1	New York, NY	
11	Tampa-St. Petersburg-Sarasota, FL	
18	Orlando-Daytona Beach-Melbourne, FL	
27	Indianapolis, IN	
29	Nashville, TN	
30	Hartford-New Haven, CT	
36	Cincinnati, OH	
38	West Palm Beach-Ft. Pierce, FL	
44	Grand Rapids-Kalamazoo-Battle Creek, MI	
49	Louisville, KY	
52	Providence, RI-New Bedford, MA	
53	Buffalo, NY	
59	Albany-Schenectady-Troy, NY	
61	Ft. Myers-Naples, FL	
62	Knoxville, TN	
68	Green Bay-Appleton, WI	
72	Flint-Saginaw-Bay City, MI	
78	Toledo, OH	
79	Huntsville-Decatur-Florence, AL	
81	Portland-Auburn, ME	
83	Paducah-Cape Girardeau-Harrisburg	
89	Chattanooga, TN	
96	South Bend-Elkhart, IN	
97	Burlington, VT-Plattsburgh, NY	
98	Tri-Cities, TN-VA	
110	Ft. Wayne, IN	
113	Lansing, MI	
115	Youngstown, OH	
138	Rockford, IL	
154	Panama City, FL	
159	Bluefield-Beckley-Oak Hill, WV	
181	Bowling Green, KY	

Source: BIA/Kelsey, Media Access Pro™<sup>7</sup>

8. It is not clear why Comcast/NBCU would drop TWN in the markets with significant African American populations, while retaining TWN in other markets where the African American populations are noticeably smaller.

<sup>7</sup> *Id.*

9. There would be no financial harm to Comcast from its continuing broad distribution of TWN, in contrast to other program carriage disputes where the issue of per subscriber fees plays a prominent and decisive role in the MVPD's determination to not give a complainant broader distribution. For example, in the Tennis Channel's dispute with Comcast, the D.C. Circuit found that it would not be in Comcast's interest to carry the Tennis Channel more broadly because of the "substantial" increase in per subscriber licensing fees that Comcast would be required to pay, "in itself a clear negative."<sup>8</sup> This is in contrast to the situation here where there is no licensing fee for Comcast to pay TWN and thus no negative financial implication for Comcast.<sup>9</sup>

10. Adding to the questions surrounding the dropping by Comcast/NBCU of TWN on certain systems is the recent success TWN has shown in attracting audiences. While individual market information is not available for TWN audiences, the nationwide totals show that TWN has retained and actually increased its total audiences in recent months. Table 3 shows the comScore audience ratings<sup>10</sup> for nationwide religious networks for the months November 2016 through January 2017. Also, included in that table are the ratings for these same networks from the year earlier and the percentage change in those ratings over that year.

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<sup>8</sup> *Comcast Cable Communications, LLC v. FCC*, 717 F.3d 982, 985 (D.C. Cir. 2013).

<sup>9</sup> Adell Decl. ¶ 17.

<sup>10</sup> Coverage rating is defined by comScore's TV Essentials as the percentage of TV households (HH Universe Estimates) in the nation that viewed the network among only the households that subscribe to the network.

Table 3 – Recent Audience Estimate History of Religious Networks

Network	Nov. '15	Nov. '16	Gain/Loss	'15-'16 change	Dec. '15	Dec. '16	Gain/Loss	'15-'16 change	Jan. '16	Jan. '17	Gain/Loss	16-'17 change
Family Entertainment TV												
Eternal Word Television Network												
Daystar Television Network												
The Word Network												
Hillsong Channel												
BYU Television												
Tri-State Christian Television												
Christian Television Network												
Average												

Source: comScore<sup>1</sup>

<sup>11</sup> See ComScore Ratings for Non-Nielsen-rated Nets, November 2016, SNL Kagan (Jan. 1, 2017), [https://www.snل.com/web/client?auth=inherit#news/document?id=38910390&s\\_data=si%3D11%26kpa%3D9ceecfb9-766d-4bda-9422-8ab1f1f205e9%26sa%3D](https://www.snل.com/web/client?auth=inherit#news/document?id=38910390&s_data=si%3D11%26kpa%3D9ceecfb9-766d-4bda-9422-8ab1f1f205e9%26sa%3D); ComScore Ratings for Non-Nielsen-rated Nets, December 2016, SNL Kagan (Jan. 27, 2017) [https://www.snل.com/web/client?auth=inherit#news/document?id=39209247&s\\_data=si%3D10%26kpa%3D9ceecfb9-766d-4bda-9422-8ab1f1f205e9%26sa%3D](https://www.snل.com/web/client?auth=inherit#news/document?id=39209247&s_data=si%3D10%26kpa%3D9ceecfb9-766d-4bda-9422-8ab1f1f205e9%26sa%3D); ComScore Ratings for Non-Nielsen-rated Nets, January 2017, SNL Kagan (Mar. 3, 2017) (<https://www.snل.com/web/client?auth=inherit#news/document?id=39724520>).

11. While the ratings for these religious networks tend to be smaller than more general programming networks and one has to be careful in making broad generalizations with such small numbers, it is obvious that TWN is “bucking the trend” among religious networks. In each of these three months almost all of the other religious networks saw decreases in their audiences, some very substantial. The average decrease across all of these networks (including TWN) was about {REDACTED} in each of these months. Yet, TWN is showing increases, and quite noticeable increases, of between {REDACTED} and {REDACTED} in each of these months. Clearly, households who receive TWN are increasing their viewing of this network, unlike the other religious networks.

12. Finally, the dropping by Comcast/NBCU of TWN on some but not all of its systems is in contrast to the remainder of the MVPD industry, and to Comcast/NBCU’s prior actions. TWN is carried by all but one of the major MVPDs (DISH Network), and that carriage has not decreased in recent years.<sup>12</sup> In fact, DIRECTV, Verizon (FIOS), and AT&T all distribute TWN to all of their subscribers.<sup>13</sup> In contrast, Comcast/NBCU now only provides TWN to approximately a quarter of its total subscribers, though it had been distributing TWN more broadly since 2000.<sup>14</sup> These other MVPDs recognize the business case for continuing to carry this religious network that has recently shown growth in audiences. Comcast/NBCU’s dropping

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<sup>12</sup> Adell Decl. ¶¶ 3, 5.

<sup>13</sup> See *Operator Subscribers by Geography*, SNL Kagan, <https://www.snl.com/SNLWebPlatform/Content/SNLReporting/SNLReportingApp.aspx?ReportID=f3c5f1a5-6d6a-4bbb-8ccc-f3a3d8567c9f> (last visited June 6, 2017); *Package Subscribers by Network*, SNL Kagan, <https://www.snl.com/SNLWebPlatform/Content/SNLReporting/SNLReportingApp.aspx?ReportID=d9786a72-097c-4d55-bd73-e363cef469b8> (last visited June 6, 2017) (Set “Operator” to “AT&T, Bright House Networks, Charter Communications Inc., DIRECTV, Time Warner Cable Inc. and Verizon Communications,” and “Headend Type” to “Cable, Digital Broadcast Satellite, and Telco,” and “Carried Network” to “The Word Network”) (last visited June 6, 2017).



of TWN, after carrying it more broadly and with no event to change that business case, and with these other MVPDs' continuing carriage, calls into question whether this decision to drop was a sound business decision.

### Comcast/NBCU Preference for Commonly Owned Networks

13. At the same time that Comcast/NBCU dropped TWN inexplicably on many of its systems, it continued to provide its subscribers access to cable networks in which it has an ownership interest. One strong example of this is the Oxygen Network, which Comcast/NBCU owns. Table 4 below shows the number of subscribers by MVPD that received the Oxygen Network in the 3<sup>rd</sup> quarter of 2016 and the change in those numbers from the 4<sup>th</sup> quarter of 2014.

Table 4 – MVPD and Their Carriage of the Oxygen Network		
MVPD	Q3 2016 Subscribers	% Change from Q4 2014 Subscribers
Spectrum/Charter (Charter, Time Warner Cable, Bright House)	{ [REDACTED]	[REDACTED]
AT&T	[REDACTED]	[REDACTED]
Direct TV	[REDACTED]	[REDACTED]
Dish	[REDACTED]	[REDACTED]
Verizon	[REDACTED]	[REDACTED]
Comcast/NBCU	[REDACTED]	[REDACTED]

Source: SNL Kagan<sup>15</sup>

14. As the rest of the MVPD industry reduces their provision of the Oxygen Network, Comcast/NBCU still continues to provide its subscribers access to this network in which it has an ownership interest.

<sup>14</sup> Adell Decl. ¶ 18.

<sup>15</sup> See Package Subscribers by Network, SNL Kagan, <https://www.snل.com/web/client?auth=inherit#industry/mediaCensusWrapper?ReportID=ec28bb>

15. Another example of Comcast/NBCU showing preference to a cable network in which it has an ownership interest is NBC Universo. Even though this cable network's 24-hour rating decreased from {REDACTED} in 2013 to {REDACTED} in 2015, Comcast/NBCU increased the number of its subscribers receiving this network from {REDACTED} to {REDACTED} in 2015.<sup>16</sup> In other words, Comcast *increased* NBC Universo's distribution in 2015 by {REDACTED} in the face of a {REDACTED} *decrease* in viewership with existing subscribers. This preference for its owned network, NBC Universo, by increasing distribution for NBC Universo, even in the face of lower ratings, is even more obvious when one also considers that Comcast/NBCU paid {REDACTED} per sub per month for carriage in 2015, a {REDACTED} increase from the 2013 level when the network actually had higher ratings.<sup>17</sup> So, with the increase in the Comcast/NBCU distribution of NBC Universo of over {REDACTED} homes and the increase in the monthly fee, Comcast/NBCU is incurring added expenses of nearly {REDACTED} for this increasingly unpopular network.

16. This willingness of Comcast to bear these additional costs is a sign that Comcast is discriminating in favor of its affiliate. As the D.C. Circuit has noted, a showing that the "incremental losses" from the carriage of an unaffiliated programmer "would be the same as or

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11-7386-4081-9ad0-1eb6542361b9 (Set "Network" to "Oxygen Network," and "Package Type" to "Buy Through" and "Date" to "2014Q4," and "2016Q3").

<sup>16</sup> See TV Network Summary, SNL Kagan, [https://www.snl.com/web/client?auth=inherit#industry/tv\\_NetworksSummary](https://www.snl.com/web/client?auth=inherit#industry/tv_NetworksSummary) (Set "Financial Item" to "Average 24 Hour Rating"); Package Subscribers by Network, SNL Kagan, <https://www.snl.com/web/client?auth=inherit#industry/mediaCensusWrapper?ReportID=ec28bb11-7386-4081-9ad0-1eb6542361b9> (Set "Network" to "NBC Universo" and "Package Type" to "Buy Through" and "Date" to "2015Q1" and "2015Q2").

<sup>17</sup> See TV Network Summary, SNL Kagan, [https://www.snl.com/web/client?auth=inherit#industry/tv\\_NetworksSummary](https://www.snl.com/web/client?auth=inherit#industry/tv_NetworksSummary) (Set "Financial Item" to "Affiliate Revenue per Avg Sub/Month" and "Country of Operation" to "USA") (last visited June 5, 2017) ("Comcast Affiliates Per Subscriber Fees").

less than the incremental losses” from carrying an affiliated programmer can be evidence of discrimination based on affiliation.<sup>18</sup> Here, Comcast is taking on huge costs for its affiliated programming, providing a discriminatory preferential treatment over the way it treats its non-affiliated networks – TWN, for example, whose carriage it is decreasing even as its ratings increase and even as Comcast incurs no cost for its carriage.

17. Comcast’s willingness to pay increased subscriber fees to its affiliates appears to be true across the board. Unlike Comcast/NBCU and other MVPD carriage of TWN, Comcast/NBCU carriage of all of the networks it owns involves payment to those networks for carriage, even if these networks attract small audiences. Table 5 shows the average 24-hour ratings, the number of Comcast/NBCU subscribers, and the monthly per subscriber fee for the Comcast/NBCU owned cable networks.

18. This history of what Comcast/NBCU is paying its owned networks makes clear that even in the face of continued low ratings, the amount being paid is noticeable and actually increasing for all of these networks. This continued carriage of these networks with increasing costs shows a distinct preference when compared to the decreased carriage of TWN, even though TWN does not charge for that carriage. The showing of this preference over TWN suggests that the decision to drop TWN from some of its systems was not a sound business or financial decision, and based on other undefined reasons.

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<sup>18</sup> *Comcast*, 717 F.3d at 986.

Table 5 – Ratings and Monthly Sub Fee for Comcast/NBCU Owned Cable Networks						
	Average 24 Hour Ratings			Monthly Per Sub Fee		
Network	2013	2014	2015	2013	2014	2015
Bravo						
Chiller						
Cloo						
CNBC						
E!						
Esquire						
Golf Channel						
MSNBC						
NBC Universo						
NBCSN						
Oxygen						
Sprout						
SyFy						
TWC						
USA						

Source: SNL Kagan<sup>19</sup>

## Potential Economic Harm to TWN

19. Even though the decrease in carriage by Comcast/NBCU is only a few months old, it is clear that the decrease will lead to economic harm. Given that some of the markets in which Comcast/NBCU has reduced or eliminated carriage are markets with large African American populations, the attractiveness of buying time on TWN by certain preachers will be diminished.<sup>20</sup> This selling of time is the major way that TWN generates revenue.

<sup>19</sup> See TV Network Summary, SNL Kagan, [https://www.snل.com/web/client?auth=inherit#industry/tv\\_NetworksSummary](https://www.snل.com/web/client?auth=inherit#industry/tv_NetworksSummary) (Set “Financial Item” to “Average 24 Hour Rating” and “Country of Operation” to “USA”) (last visited June 5, 2017); Comcast Affiliates Per Subscriber Fees.

<sup>20</sup> Adell Decl. ¶¶ 23, 37.

20. Other sources of revenue for TWN include the merchandise that TWN sells within and surrounding the programming, and the donations it receives from viewers. Although TWN will still reach a good number of subscribers through the carriage by other MVPDs, the loss of the Comcast/NBCU subscribers will affect these three different revenue sources generated by TWN.

21. According to TWN President Kevin Adell, the loss of the seven million Comcast subscribers has led to {REDACTED} {REDACTED}.<sup>21</sup> {REDACTED} {REDACTED} }<sup>22</sup> So, even in the few months since the Comcast/NBCU dropping of TWN on many systems, TWN is already feeling the impact.

22. Any loss in revenue caused by the decrease in the number of Comcast/NBCU subscribers will have a more significant percentage impact on the profitability of TWN than the decrease in revenue. TWN, like all other cable networks, incurs costs that are unrelated to the number of subscribers. It incurs substantial fixed costs for the “first viewer” and has little if any additional costs to provide that programming for additional viewers. Hence, any decrease in revenue will not lead to any decrease in costs, and thus profitability will suffer greatly.

## Conclusion

23. There is no denying the fact that the actions taken by Comcast/NBCU in dropping TWN from some of its systems was dramatic and significant for TWN. TWN is a successful

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<sup>21</sup> *Id.* ¶ 23.

religious network with universal coverage being provided by many of the other major MVPDs. Unlike all of the other national religious networks, it has been actually showing increases in the audiences it attracts. Comcast/NBCU has been providing that same universal coverage on its systems for some time, so it is hard to explain why it decided a few months ago to make this unusual move.

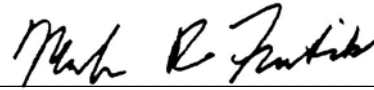
24. At the same time Comcast/NBCU made this surprising move on TWN carriage, it maintained widespread carriage of its own cable networks. Many of these owned networks receive very low ratings, yet at the same time they are receiving noticeable monthly per subscriber fees for that carriage. In contrast, TWN charges *no* monthly fee to any of the MVPDs that carry the network. Moreover, in recent months, TWN continues to expand its audiences. Hence, this dropping of TWN on many of its systems does not appear to be a sound business decision by Comcast/NBCU.

25. This decision by Comcast/NBCU will have a noticeable impact on TWN's ability to generate revenue through its various sources – program time, merchandise sales and donations. TWN cannot decrease its costs with the loss of these Comcast/NBCU subscribers, and, given the high fixed costs nature of cable networks, the loss of revenue due to the loss of these subscribers will have a more significant impact on the profitability of TWN than the percentage loss of subscribers.

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<sup>22</sup> *Id.*

I hereby declare, under penalty of perjury, that the statements set forth in this report are true and correct to the best of my knowledge, information, and belief, formed after reasonable inquiry.



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Mark R. Fratrik  
June 7, 2017



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William Redpath  
June 7, 2017

# APPENDIX A



**Qualifications  
of  
Mark Fratrik**

Mark Fratrik is a vice president of BIA/Kelsey. He serves as the company's chief economist and is responsible for forecasting across all local media segments. He also manages BIA/Kelsey's numerous proprietary databases and conducts primary research on various trends as they affect the broadcasting and related communications industries. Additionally, Fratrik is heavily involved in the company's strategic and financial consulting projects, conducting research and analysis for clients on matters related to the broadcasting, digital media and related communications industries.

Throughout his career, Fratrik has researched and spoken at numerous conferences on the impact of the economy on the broadcasting industries, proposed and enacted regulatory changes, and new media technologies, including DTV datacasting. He is often quoted in the media and is a leading spokesperson concerning trends and forecasts for the media industry including analyzing competitiveness of media and related industries. He is the author BIA/Kelsey's series of studies on the state of the radio and television industry.

Fratrik received his B.A. in mathematics and economics from State University of New York at Binghamton and his master's and doctoral degrees in economics from Texas A&M in College Station, Texas. He served as an adjunct professor of economics at Johns Hopkins University for more than seven years.

## Curriculum Vitae Mark R. Fratrik

Sr. Vice President, Chief Economist  
BIA/Kelsey  
15120 Enterprise Court, Suite 100  
Chantilly, VA 20151  
703-818-2425  
[Mfratrik@bia.com](mailto:Mfratrik@bia.com)

### Education

Ph.D., 1981, Economics, Texas A&M University, College Station, TX  
M.S., 1978, Economics, Texas A&M University, College Station, TX  
B.A., 1976, Mathematics and Economics (honors), State University of New York at Binghamton

### Professional experience

2001 – Present

BIA/Kelsey (originally called BIA Financial Network)

Senior Vice President, Chief Economist

- Consulting in litigation and tax-related cases
- Developing of new broadcasting and related industry research offerings
- Speaking at industry forums

Fall 2002 – Fall 2009

The Johns Hopkins University

Adjunct Professor, *The Political Economy of Mass Communications*

1985 – 2000

National Association of Broadcasters

Vice President/Economist      1991 – 2000

- Supervised the Research and Planning Department.
- Conducted primary research about the broadcasting and related industries, used for testimony before the Congress and in filings at the FCC and other governmental agencies.
- Conducted research and studies included in publications and reports distributed by NAB.
- Presented results of primary research and other analyses at industry forums.

Director of Financial and Economic Research      1985 -- 1991

- Supervised the collection and dissemination of the annual industries financial reports

1980 – 1985

Federal Trade Commission  
Bureau of Economics  
Staff Economist

- Conducted analysis of proposed mergers and other arrangements.
- Conducted analyses of industry practices to evaluate economic impact.
- Participated in litigation support in several antitrust cases.

Professional activities

Broadcast & Cable Financial Management Association – Board Member 2001-2004  
American Economic Association – member  
Southern Economic Association – member  
*Journal of Media Economics* – reviewer  
*Journal of Broadcasting and Electronic Media* - reviewer

Articles

“Loosen Up, Already,” *Broadcasting & Cable*, April 18, 2005, p. 37.

“The Party’s Not Over, The Band is Just Taking a Break: How Radio Will Fare,” *The Financial Manager*, April-May 2001, pp. 29- 31.

“Broadcasting Industry Responses to New Technologies (with Rick Ducey), *Journal of Media Economics*, Fall 1989, Vol. 2, No. 2, pp. 67-86.

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“The Television Audience-Revenue Relationship Revisited,” Presented at the Broadcast Education Association Conference, April 28, 1986.

“How Important is Local Advertising to Today’s Television Station,” *Broadcast Financial Journal*, April 1986, pp. 12 –15.

“Predatory Pricing Theory Applied: The Case of Supermarkets vs. Warehouse Stores,” (with Richard Craswell), *Case Western Reserve Law Review*, Vol. 26, No. 1, 1985-86.

“Unanswered Questions About Franchising: Comments,” (with Ron Lafferty), *Southern Economic Journal*, 1984, pp. 928-932.

Books and Reports

*State of The Radio Industry:*

*Radio Transactions 2000, 2001, 2003* BIA Financial Network.

*Radio Industry Revenues – 2000 & Beyond*, 2001 BIA Financial Network

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*What is Going on With Radio Formats*, 2002 BIA Financial Network

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**Curriculum Vitae - Mark R. Fratrik**

*Radio Transactions 2001: Where Did All the Deals Go?*, 2002, BIA Financial Network  
*Radio Industry Revenue: Radio Revenues: Is the Bloom Back?*, 2002, BIA Financial Network

*State of The Television Industry:*

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*Television Industry Revenues – 2000 & Beyond*, 2001 BIA Financial Network.  
*Ownership Report: What is Owned by Whom and Where*, 2001 BIA Financial Network.  
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*Television Transactions 2001: The Lull Before the Storm?*, 2002 BIA Financial Network  
*Television Revenues 2003: Is There Hope?*, 2002 BIA Financial Network

*FM Subcarrier Market Report/Technology Guide* (with David Layer), 1997, National Association of Broadcasters.

*These Taxing Times: A Tax Guide for Broadcasters* (editor), 1996, National Association of Broadcasters.

*Strategic Planning Handbook for Broadcasters* (with Richard Ducey), 1994, National Association of Broadcasters.

*1994 FM Subcarrier Market Report*, (with Kenneth Springer), 1994, National Association of Broadcasters.

*The 1993 Tax Act: What it Means* (editor), 1993, National Association of Broadcasters.

*Fair Market Value of Radio Stations: A Buyer's Guide*, 2<sup>nd</sup> edition (with Bruce Bishop Cheen), National Association of Broadcasters, 1990.

*RadiOutlook: Forces Shaping the Radio Industry* (with John Abel & Richard Ducey), April 1988, National Association of Broadcasters.

*Targeting Radio's Future: Radio '87*, (with John Abel & Richard Ducey), September 1987, National Association of Broadcasters.

*The Small Market Television Manager's Guide* (editor), 1987, National Association of Broadcasters.

*Tax Reform: Effects on Broadcasters and Broadcasting* (editor), 1987, National Association of Broadcasters.

"The New Audio Marketplace: Challenges and Opportunities for Broadcasters," (with Richard Ducey) NAB Special Report, September 1985.

"The New Audio Marketplace: Challenges and Opportunities for Broadcasters," NAB Special Report, September 1985.

Policy Research

"Media Outlets By Market," Attachment A, Comments of the National Association of Broadcasters, FCC Quadrennial Regulatory Review, MB Docket 06-121, October 23, 2006.

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“A Second Look at Out-of Market Listening and Viewership: It Has Even More Significance,” Attachment C Comments of the National Association of Broadcasters, FCC Quadrennial Regulatory Review, MB Docket 06-121, October 23, 2006.

“Over the Air Radio Service to Diverse Audiences,” Attachment G Comments of the National Association of Broadcasters, FCC Quadrennial Regulatory Review, MB Docket 06-121, October 23, 2006.

“Economic Viability of Local Television Stations in Duopolies,” Attachment H Comments of the National Association of Broadcasters, FCC Quadrennial Regulatory Review, MB Docket 06-121, October 23, 2006.

“Reaching the Audience: An Analysis of Digital Broadcast Power and Coverage,” prepared for the Association of Maximum Television, Inc. October 23, 2003.

“Analysis of Radio Geographic Market Definitions for Stations in Unrated Areas,” Attachment, Comments of National Association of Broadcasters, Definition of Radio Markets for Areas Not Located in Arbitron Survey Areas, October 6, 2003.

“The NAB’s Proposed 10/10 Rule for Evaluating Future Local Television Duopolies: Why 10 as a Threshold Makes Sense,” Attachment A, Comments of National Association of Broadcasters, FCC Biennial Review, February 3, 2003

“Television Local Market Agreements and Local Duopolies: Do They Generate New Competition and Diversity?” Attachment A, Comments of LIN Television, Raycom Communications, and Waterman Broadcasting, FCC Biennial Regulatory Review, January 2003.

“Out of Market Listening and Viewing: It’s Not To Be Overlooked,” Attachment A, Comments of the National Association of Broadcasters, FCC Biennial Regulatory Review, January 2003.

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“Independent Radio Voices in Radio Markets,” “Format Availability after Consolidation,” & “Interference from Low Power FM Stations to Existing Stations” (with David Wilson), Attachments A, B, and Volume 3, respectively, NAB Comments in re FCC examination of the Creation of a Low Power Radio Service, August 1999.

“Media Outlets by Market – Update,” “A Financial Analysis of the UHF Handicap,” Appendices A and C, respectively, NAB Comments in re FCC 1998 Biennial Review of Commission Ownership Rules, July 1998.

“The Television Industry’s Provision of Closed Captioning Services in 1996,” Attachment 1 NAB Comments in re FCC examination of Closed Captioning and Video Description of Video Programming, March 1996.

“Radio Station Financial Picture,” Attachment 13, NAB Comments in re FCC Establishment of Rules and Policies for the Digital Audio Radio Satellite Service, November 1995.

“The 1990 Children’s Television Act: A Second Look at Its Impact” (with Richard V. Ducey), Attachment 1, NAB Reply Comments in re FCC examination of Children’s Television Programming Rules, October 1995.

“The 1990 Children’s Television Act: Its Impact on the Amount of Educational and Informational Programming,” Attachment 1, NAB Comments in re FCC examination of Children’s Television Programming Rules, June 1994.

“Minimum Number of Owners under NAB Proposed Ownership Rules,” Appendix D, NAB Comments in re FCC examination of Revision of Radio Rules and Policies, May 1992.

“National Ownership Concentration of Television Stations,” Appendix A, NAB Comments in re FCC Review of the Policy Implications of the Changing Video Marketplace, November 21, 1991.

“AB Switch Availability and Use,” Attachment 1, NAB Comments in re FCC Examination of Carriage of Television Broadcast Signals by Cable Television Systems, September 23, 1991.

“FM Station Financial Picture,” Appendix B, NAB Request for Temporary Suspension of New Commercial FM Stations Allotment and Application Processing, February 10, 1991.

“Financial Analysis of Program Duplication for Radio Stations,” Appendix E, NAB Comments in re FCC Review of the Technical Assignment Criteria for the AM Broadcast Service, November 1990.

“Programming Aspects of the Territorial Exclusivity Rule,” “Financial Condition of Small Market Network Affiliated Television Stations,” Appendices A and E, respectively, NAB Comments in re FCC examination of Program Exclusivity Rules, January 1989.

“License Renewal/Transfer Study,” (with Michael Fitzmaurice), Appendix A in re FCC examination of Formulation of Policies & Rules Relating to Broadcast Renewal Applications, October 14, 1988.

“An Updated Examination of Market Concentration in Radio Markets,” Appendix E, NAB Comments in re FCC examination of Broadcast Multiple Ownership Rules, June 1987.

Testimony at the Environmental Protection Agency: In the Matter of Public Hearing on Federal Radiation on Protection Guidance: Proposed Alternatives for Controlling Public Exposure to Radio Frequency Protection, September 22, 1986.

“FM Facilities Reclassification Survey: Class B and Class C FM Stations,” (with Rick Ducey) Appendix A, NAB Comments in re FCC examination of FM Station Reclassification, August 1986.

“Financial Information on Commercial Radio Stations for AM Band Expansion Report,” Report V, submission of the Subgroup of Radio Spectrum Allocations on the Advisory Committee on Radio Broadcasting, May 1985.

#### Testimony

Satellite Broadcasting & Communications Association of America, et al vs. Federal Communications Commission, et al, U.S. District Court, Eastern District of Virginia, deposed on May 10, 2001.

Costa De Oro Television, Inc. vs. Charter Communications, LLC, Superior Court of California, Los Angeles County, Central District, deposed on December 17, 2001.

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**Curriculum Vitae - Mark R. Fratrik**

Copyright Arbitration Royalty Panel, witness for National Association of Broadcasters, testified on May 7 –8, 2003.

Braunstein vs. KICU, et. al., Superior Court of the State of California, County of Santa Clara, deposed on February 17, 2004.

Infinity Radio, Inc. vs. Elena Whitby, et. al., Fifteenth Judicial Circuit, Florida, testified on April 4 and 6, 2005.

Qantum Communications Corporation v. Tiger Communications, Alabama, deposed on February 3, 2006.

FCC *En Banc* Hearing On Barriers to Communication Financing, July 29, 2008, New York, NY.

Michael H. Vechery v. Bonneville International Corporation, et. al., (settled).

Salem Media of Virginia, Inc. v. WAVA Limited Partnerships et. al., (settled).

Emmis Radio, LLC v. Kurt Alexander, a/k/a “Big Boy”, Superior Court of the State of California, County of Los Angeles, Central District, February, 2105 (expert report and rebuttal report submitted)

Tinicum Capital Partners II v. Liberman Broadcasting, Inc., Court of Chancery of the State of Delaware, C.A. No. 11902-VCL, February 2016 (expert report submitted)

# APPENDIX B



**Qualifications**  
**of**  
**William Redpath, ASA, CFA, CIPM, CPA, ABV**

**William Redpath** is a Vice President for BIA/Kelsey, a financial and strategic consulting firm with an expertise in the appraisal of broadcasting, cable, and telecommunications properties and their tangible and intangible assets. Prior to joining BIA/Kelsey in 1985, Mr. Redpath was a Senior Financial Analyst with NBC in New York.

Mr. Redpath earned his B.A. degree in Economics and Political Science from Indiana University and his M.B.A. from The University of Chicago.

After completing his formal education, Mr. Redpath was a staff auditor in the Cincinnati office of Arthur Andersen & Co. from 1980 to 1982. Subsequent to that, he was Assistant Financial Manager of WISH-TV, Indianapolis. He then joined the Internal Audit Department at ABC, New York, after which he joined NBC.

Mr. Redpath has prepared hundreds of valuations of business enterprises, privately-held equity interests, and purchase price allocations for financial and tax reporting purposes. He has been an expert witness in numerous litigations. He has authored articles for the BCFM Journal and other professional journals on intangible asset valuation. He has testified in state courts, United States District Court and United States Bankruptcy Court on valuation matters.

Mr. Redpath is a Certified Public Accountant licensed in the Commonwealth of Virginia. He is a member of the American Institute of Certified Public Accountants, from which he has earned the Accredited in Business Valuation (ABV) designation. He is also an Accredited Senior Appraiser (ASA) in Business Valuation with the American Society of Appraisers, a Chartered Financial Analyst (CFA), and he holds the Certificate in Investment Performance Measurement (CIPM) designation from the CFA Institute.

# EXHIBIT 5



PUBLIC VERSION - REDACTED

PRIVILEGED AND CONFIDENTIAL

20733 W. 10 Mile Rd. • Southfield, Michigan 48075 • Phone: 248-357-4566 • Fax: 248-350-3422 • [www.thewordnetwork.org](http://www.thewordnetwork.org)

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February 6, 2017

VIA OVERNIGHT MAIL

Mr. Brian Roberts  
Chairman & CEO  
Comcast Corporation  
1701 JFK Boulevard  
Philadelphia, PA 19103

Mr. Neil Smit  
President & CEO  
Comcast Cable Communications, LLC  
1701 JFK Boulevard  
Philadelphia, PA 19103

Re: **The Word Network - Pre-Filing Notice Pursuant to 47 C.F.R. § 76.1302(b) (Program Carriage Complaint)**

Dear Messrs. Roberts and Smit:

I write in regard to the unilateral decision by Comcast to remove carriage of The Word Network (“Word”) from 456 Comcast systems representing approximately 7 million homes effective on or after January 12, 2017. Comcast’s decision constitutes unlawful discrimination in violation of the FCC’s program carriage rules<sup>1</sup> and its order approving Comcast’s acquisition of NBC Universal.<sup>2</sup>

Word was informed of this decision on November 11, 2016 through a two-sentence letter we received from Jennifer Gaiski, Senior Vice President, Content Acquisition of Comcast Cable. Her letter provided no explanation for the decision. Instead, when we asked her why Comcast was taking this action, she said, “Because we are Comcast, and we can.”

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<sup>1</sup> See 47 C.F.R. § 76.1301(c).

<sup>2</sup> See Applications of Comcast Corporation, General Electric Co. & NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion and Order*, 26 FCC Rcd. 4238, 4287 ¶ 121 (2011) (“Comcast-NBCU Order”).

Mr. Brian Roberts  
Mr. Neil Smit  
February 6, 2017  
Page 2

Shortly after January 12, Comcast removed Word from millions of homes, including in key African American markets such as Washington, D.C., Philadelphia, PA, and Baltimore, MD, as well as in major metropolitan areas such as Pittsburgh, PA, Houston, TX, Salt Lake City, UT, San Francisco/Oakland, CA, Denver, CO, Boston, MA, and Minneapolis/St. Paul, MN. This decision stands in stark contrast to Word's other multichannel video programming distributors, including DIRECTV, Charter, Bright House, AT&T U-verse, and Cox, which continue to distribute Word broadly.

Indeed, Comcast has taken this action without any valid justification. Word has been carried by Comcast since 2000. Word has never charged Comcast a per-subscriber fee. Word makes its programming available to Comcast without charge. In fact, Word pays Comcast fees for the delivery of Word's content to Comcast's systems. And, Comcast benefits from subscribers who pay to access the tier on which Word is carried.

While we do not oppose Comcast adding another African-American religious network to its systems, Comcast lacks any valid business justification for doing so at the expense of Word. We are concerned that Comcast has—or intends to—affiliate itself with the Impact Network. Our concerns are elevated by comments made by the Impact Network, which described Comcast as a “partner.”

Further, Comcast treats its affiliated networks better than Word. It has rewarded affiliated networks with expanded distribution even in the face of decreasing ratings and is paying those affiliated networks per-subscriber fees. Despite being more expensive to carry than Word, and in the face of decreasing ratings, Comcast provides more favorable treatment to such networks than to Word—the distinction being that Word is independent of Comcast. The FCC's program carriage rules and the *Comcast-NBCU Order* prohibit this disparity in treatment.<sup>3</sup>

In addition, at least one Comcast-affiliated network, the Oxygen Network, is similarly-situated to Word. These networks compete for viewers and offer competing content, including featuring overlapping talent. The Oxygen Network airs for example the “Preachers of LA” and “Preachers of Detroit” franchises that chronicle the lives of African American bishops and pastors in Los Angeles and Atlanta, respectively.<sup>4</sup> One “Preachers of Detroit” cast member,

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<sup>3</sup> See 47 C.F.R. § 76.1302(d)(3)(iii)(B)(1); *Comcast-NBCU Order*, 26 FCC Rcd. at 4287 ¶ 121.

<sup>4</sup> Preachers of LA, Oxygen Media LLC, <http://www.oxygen.com/preachers-of-la>; Preachers of Detroit, Oxygen Media LLC, <http://www.oxygen.com/preachers-of-detroit>.

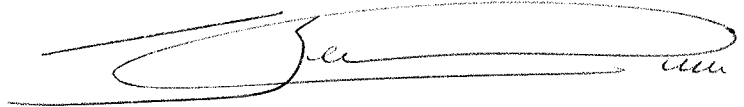
Mr. Brian Roberts  
Mr. Neil Smit  
February 6, 2017  
Page 3

Bishop Charles H. Ellis, leads a featured program on Word.<sup>5</sup> Despite being similarly-situated, Comcast pays the Oxygen Network a per-subscriber fee and distributes it more broadly than Word. Treating the Oxygen Network in this more favorable manner is prohibited.<sup>6</sup>

We still hope we can resolve this matter amicably. We are genuinely interested in negotiating a fair resolution with you. We know you have received numerous complaints—as we have—from African American leaders and Comcast subscribers about Comcast's decision to eliminate carriage of Word from 7 million homes. If you are interested in meeting to resolve this matter, please contact me or our attorney as soon as practicable.

This letter commences a ten day period after which we intend to file a program carriage complaint against Comcast, unless we hear from you or your representative that Comcast will meet to resolve this issue without involvement of the government.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kevin Adell', written over a horizontal line.

Kevin Adell  
President and CEO

CC:  
Markham Erickson, Steptoe & Johnson LLP, Counsel to The Word Network

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<sup>5</sup> Meet Bishop Charles Ellis of Preachers of Detroit!, Praise 102.7, <https://praise1027detroit.hellobeautiful.com/544180/meet-bishop-charles-ellis-of-preachers-of-detroit>.

<sup>6</sup> See 47 C.F.R § 76.1302(d)(3)(iii)(B)(2).

# EXHIBIT 6



300 New Jersey Avenue, NW  
Suite 700  
Washington, DC 20001  
www.comcastcorporation.com

**Francis M. Buono**  
SVP & Sr. Deputy General Counsel  
Comcast Corporation

February 16, 2017

**VIA ELECTRONIC MAIL & OVERNIGHT MAIL**

Mr. Markham Erickson  
Counsel to The Word Network  
Steptoe & Johnson LLP  
1330 Connecticut Ave., NW  
Washington, DC 20036

*Re: The Word Network – Pre-Filing Notice of Program Carriage Complaint*

Dear Mr. Erickson:

We are in receipt of the February 6 letter from Kevin Adell, President and CEO of The Word Network (“Word”), to Brian Roberts and Neil Smit, threatening to file a program carriage complaint at the FCC against Comcast. There is no basis for such a complaint, and we urge your client to reconsider pursuing this meritless action. Should Word proceed with a regulatory complaint, Comcast will defend itself vigorously and reserves all rights in doing so.

As a preliminary matter, Word’s February 6 pre-filing notice letter fails to provide sufficient details to adequately apprise Comcast of the specific nature of Word’s potential complaint, as the program carriage rules require.<sup>1</sup> Rather, Word merely offers vague speculation that Comcast “has – or intends to – affiliate itself with the Impact Network” (Comcast is not affiliated with the Impact Network and has no plans to become affiliated), and that it treats its affiliated networks – particularly Oxygen, which it alleges is a “similarly situated” network (Oxygen is not at all similarly situated with Word) – better than Word. But even putting aside this procedural deficiency, Word’s attempt to manufacture a claim of discrimination on the basis of affiliation is entirely without merit.

Contrary to Word’s claim that Comcast acted “without any valid justification” in reducing carriage of Word last month, Comcast has explained to your client on several occasions its rationale for this decision. To review, as part of our ongoing evaluation of the programming mix we deliver to our customers, we determined last Fall that the Impact Network (“Impact”), an African American-owned independent network that also focuses on Christian programming for

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<sup>1</sup> See 47 C.F.R. § 76.1302(b) (“The [pre-filing] notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint.”).

Mr. Markham Erickson  
 February 16, 2017  
 Page 2

the African American audience, provides a broader array of programming than Word, and likely would have more appeal to our customers. In addition, the vast majority of Word's programming is ministries, much of which can be found on Impact as well as other religious networks Comcast carries like Daystar, Hillsong, and TBN, and online through Word's website and app and other sources. In light of all of this, Comcast determined that increasing distribution of Impact and reducing carriage of Word – which Comcast was clearly permitted to do under our contract – would better serve our customers and be a more efficient use of our limited bandwidth.<sup>2</sup>

As to your insinuation that Comcast has some “affiliation” with Impact, Comcast does not now – nor does it have any intention to – hold any financial or ownership interest in Impact. Any claim to the contrary in a program carriage complaint would thus be unsupported by any facts and irresponsible. To the contrary, Impact is an independent African American-owned Christian network to which Comcast is proud to give voice.<sup>3</sup>

While we understand that Word is not happy with Comcast's decision, Word's disagreement with Comcast's reasonable business judgment as to how it chooses to carry two *unaffiliated* networks plainly cannot give rise to a plausible claim of discrimination *on the basis of affiliation* under the program carriage rules or the condition in the *Comcast-NBCUniversal Order*.

As to Word's claims about the Oxygen network – which are simply a newfound litigation position presented for the first time in Mr. Adell's letter – the notion that Word and Oxygen are somehow “similarly situated” is entirely baseless. I assume you are aware that Oxygen recently announced that it is rebranding as a true crime network, which makes any putative comparison between Word and Oxygen entirely implausible.<sup>4</sup> And even as to Oxygen's present iteration, the fact that it focuses on “young, multicultural women” as its target audience<sup>5</sup> and features shows such as “Bad Girls Club,” “Tattoos after Dark,” and “Celebrities Under Cover,”<sup>6</sup> is dispositive

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<sup>2</sup> At no time during any interactions with Word did Comcast Cable's Senior Vice President of Content Acquisition, Jennifer Gaiski, state, as Word claims, that the reason for these changes was “[b]ecause we are Comcast, and we can.”

<sup>3</sup> Members of the African American and Christian communities have applauded Comcast's expanded distribution of Impact. Dr. Michael Chitwood and his organization ICCM, which supports the advancement of ministers and Christian workers, have praised this decision. See Dr. Michael Chitwood, *Dr. Michael Chitwood/ICCM Extends Congratulations to the New Partnership Between Comcast Xfinity and The Impact Network*, Facebook (Nov. 17, 2016), <https://www.facebook.com/drmichaelchitwood/posts/1219426608148344>. Dr. Benjamin F. Chavis Jr., President and CEO of the National Newspaper Publishers Association, said that the expanded distribution of Impact on Comcast is “good news for Black America.” Roz Edward, *The Impact Network Expands Reach Through Comcast*, Grand Rapids Times, Dec. 23, 2016, <http://www.grtimes.com/archive2016/12-23-2016.asp> (“We congratulate both Comcast and The Impact Network for working together to significantly enhance television broadcast opportunities for Black America.”).

<sup>4</sup> See R. Thomas Umstead, *Oxygen To Rebrand As A True Crime Channel*, Multichannel News, Feb. 1, 2017, <http://www.multichannel.com/news/content/oxygen-rebrand-true-crime-channel/410607>.

<sup>5</sup> Oxygen, NBCUniversal Businesses, <http://www.nbcuniversal.com/business/oxygen-media> (last visited Feb. 15, 2017).

<sup>6</sup> See Oxygen Shows, <http://www.oxygen.com/shows> (last visited Feb. 15, 2017).

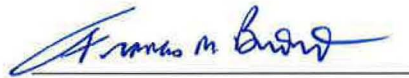


Mr. Markham Erickson  
 February 16, 2017  
 Page 3

refutation of any similarity with Word's Christian ministry focus – notwithstanding an overlap in one featured preacher or program.<sup>7</sup>

In short, Comcast's decision to reduce carriage of Word was not based on affiliation or lack thereof, which is evidenced by the fact that Comcast replaced Word's programming in certain markets with that of another independent, unaffiliated programmer. At the same time, we continue to carry Word to millions of our customers in Word's core markets in the Midwest and South. These decisions collectively reflect our best editorial and business assessment of how to serve our customers in order to ensure that they have an appealing range of content choices, including those offering Christian programming for the African American community. Any effort to base a program carriage suit on these facts would be frivolous and a waste of the parties' – and the Commission's – time and resources, and we urge your client to reconsider.<sup>8</sup>

Sincerely,



Francis M. Buono  
 Senior Vice President  
 Legal Regulatory Affairs &  
 Senior Deputy General Counsel  
 Comcast Corporation

cc: Michael D. Hurwitz, Willkie Farr & Gallagher LLP, Counsel to Comcast Corporation

<sup>7</sup> Even assuming for the sake of argument that such a minuscule overlap was evidence of programming similarity (which it is not), the Commission has made clear that its similarly situated requirement cannot be met by similarity of programming alone, but must be satisfied by other factors as well, such as similarity of advertisers. *See* 47 C.F.R. § 76.1302(d)(3)(iii)(B)(2)(i) (referring to a “combination of factors”); *Revision of the Commission's Program Carriage Rules*, Second Report and Order, 26 FCC Rcd. 11494 ¶ 14 (2011) (“[I]t is unlikely that programming would be considered ‘similarly situated’ if only one of these factors is found to be similar. For example, a complainant is unlikely to establish a *prima facie* case of discrimination on the basis of affiliation by demonstrating that the defendant MVPD carries an affiliated music channel targeted to younger viewers but has declined to carry an unaffiliated music channel targeted to older viewers with lower ratings and a higher license fee.”). In this regard, it is worth noting that, while Oxygen is an ad-supported network, Word does not appear to run any commercials from third-party advertisers. Other factors identified by the Commission also strongly cut against a claim of similarity.

<sup>8</sup> We note that Word's asserted interest in resolving this matter amicably runs contrary to your client's conduct to date. Word has repeatedly misrepresented to civil rights leaders, members of Congress, and to the public that Comcast is “dropping” Word and has leveled false allegations about our compliance with our Memorandum of Understanding with African American leadership organizations in the *Comcast-NBCUniversal Order*.

# EXHIBIT 7

Markham C. Erickson  
202 429 8032  
merickson@steptoe.com

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
202 429 3000 main  
www.steptoel.com

PUBLIC VERSION - REDACTED

**Steptoe**  
STEPTOE & JOHNSON LLP

May 19, 2017

Via OVERNIGHT DELIVERY

Francis M. Buono  
Senior Vice President  
Legal Regulatory Affairs & Senior Deputy General Counsel  
Comcast Corporation  
300 New Jersey Avenue, NW  
Suite 700  
Washington, DC 20001

Re: **The Word Network – Supplemental Pre-Filing Notice of Program Carriage Complaint**

Dear Mr. Buono:

I received from you on February 16, 2017 a letter responding to a February 6, 2017 letter from Mr. Kevin Adell, President and CEO of The Word Network (“TWN”), to Mr. Brian Roberts, Chairman & CEO of Comcast Corporation, and Mr. Neil Smit, President & CEO of Comcast Cable Communications. Mr. Adell’s letter described Comcast’s removal of TWN from millions of homes, including in key African American markets. He alleged that such actions, taken without valid justification, constitute unlawful discrimination in violation of the FCC’s program carriage rules (“Program Carriage Rules”) and its order approving Comcast’s acquisition of NBC Universal (“*Comcast-NBCU Order*”). It put Comcast on notice of its intent to file a complaint under the *Comcast-NBCU Order* and the Program Carriage Rules.

This supplemental pre-filing notification letter responds to your February 16, 2017 letter, and further advises Comcast of the nature of TWN’s complaint.

As the largest African American religious network in the world, TWN is desirable. TWN provides high-quality, original ministry programming to tens of millions of viewers in the United States and hundreds of millions throughout the world. These viewers rely upon TWN’s programming for both spiritual edification and life-improvement. Indeed, TWN features many of the most popular preachers in the United States, who have congregations in the millions. TWN also puts forward a unique, diverse programming lineup with high-demand live

Francis M. Buono  
May 19, 2017  
Page 2

programming, as well as popular programming targeted toward millennials. DIRECTV, AT&T U-Verse, Charter, and Verizon all recognize the attractiveness of TWN, and each broadly distributes TWN.

Additionally, TWN provides industry leading, state-of-the-art facilities through its substantial and ongoing investments in its cameras, production equipment, studio, and other equipment, which allow it to broadcast with a superior network quality relative to any other African American religious network. Indeed, no other religious programmer exceeds the quality of TWN's network or facilities.

Your letter explains that Comcast's decision was made because the Impact Network "provides a broader array of programming than Word," and that "increasing distribution of Impact and reducing carriage of Word...would better serve [your] customers and be a more efficient use of [your] limited bandwidth."<sup>1</sup> These rationales are not supported by the facts. Comcast's decision was not supported by any valid business reason.

As an initial matter, TWN carriage imposes no cost on Comcast. TWN does not charge Comcast a per-subscriber fee for distribution. Consequently, reducing distribution of TWN does not result in any cost savings for Comcast.

Comcast benefits substantially from the broad carriage of TWN's valuable, original programming. TWN viewers pay Comcast an additional fee to access a less penetrated tier where TWN is carried. Comcast additionally benefits from the transport fees TWN pays Comcast, which amount has stayed constant since Comcast's decision to reduce TWN on 456 of its systems.

Comcast replaced TWN with the Impact Network, which is an objectively inferior network. The Impact Network does not pay Comcast for uplink and instead distributes its programming to Comcast through the Internet, which results in poor video quality. The Impact Network also primarily features its founder, Bishop Wayne T. Jackson, as well as less popular programmers. The Impact Network commands substantially fewer fees from ministers for airtime than TWN. The Impact Network provides a narrower range of original religious programming than TWN. The Impact Network's website does not promote any non-ministry programming.<sup>2</sup>

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<sup>1</sup> Letter from Francis M. Buono, Senior Vice President and Senior Deputy General Counsel, Comcast Corporation, to Markham C. Erickson, Partner, Steptoe & Johnson LLP, 2 (Feb. 16, 2017).

<sup>2</sup> Impact Network, <https://www.watchimpact.com/> (last visited May 19, 2017) (listing exclusively ministry programming under "Shows").

Francis M. Buono  
May 19, 2017  
Page 3

As detailed in Mr. Adell's letter, Comcast's decision to reduce TWN cannot be supported by any cost-benefit analysis.<sup>3</sup> Comcast clearly did not substantively analyze TWN's merits before making its decision, and it clearly failed to have given consideration to such merits when they were made known to Comcast. Comcast's interactions with TWN staff and religious leaders, who expressed concern about Comcast's actions, demonstrated that Comcast made its decision without any understanding of the African American religious programming ecosystem. Comcast's reasons were unconvincing and clearly post hoc rationalizations.

In contrast to this treatment of TWN, Comcast gives its affiliated networks broader distribution than TWN, often paying each a generous per-subscriber fee. It also gives its affiliated networks broader distribution than other major MVPDs. And it does so even when such network is failing. Comcast's affiliation with its networks alone is sufficient to ensure this broad distribution. This disparate treatment of TWN, on the basis of affiliation and non-affiliation and without legitimate business justification, violates the *Comcast-NBCU Order* and the Program Carriage Rules.

Comcast additionally acted unlawfully during a November 22, 2016 meeting between Mr. Adell and Jennifer Gaiski, Senior Vice President, Content Acquisition of Comcast Cable, and her team. During this meeting, Ms. Gaiski informed Mr. Adell that Comcast would not carry TWN unless it granted Comcast exclusive digital rights to its programming. When Mr. Adell explained that TWN was not interested in providing for free the digital rights of TWN, Comcast refused to further negotiate for carriage, making it obvious that negotiations would not proceed until TWN agreed to grant Comcast digital rights to TWN's programming.

The digital rights Comcast demanded, if granted, would create an affiliation between Comcast and TWN and such demand constitutes unlawful discrimination against TWN on the basis of its non-affiliation. It further constitutes an illegal demand for a financial interest in TWN. Today, the digital rights of TWN represent a substantial and increasing share of the value of TWN. Exclusive ownership of those digital rights would substantially exceed the FCC's threshold for attributable interest of an affiliate, as well as could a demand for non-exclusive digital rights.

Comcast's demand for exclusive digital rights violates two additional conditions of the *Comcast-NBCU Order*. First, a demand for exclusive rights to the digital distribution of TWN's programming would preclude TWN from distributing its video programming to an OVD or

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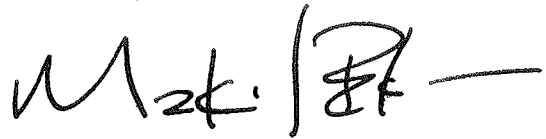
<sup>3</sup> Letter from Kevin Adell, President & CEO, The Word Network, to Brian Roberts, Chairman & CEO, Comcast Corporation, and Neil Smit, President & CEO, Comcast Cable Communications, LLC, 2 (Feb. 6, 2017).

Francis M. Buono  
May 19, 2017  
Page 4

distributing such programming on TWN's own online platform.<sup>4</sup> Second, Comcast's demand constitutes an unfair practice with the purpose of hindering significantly the ability of MVPDs and OVDs from providing TWN online to their subscribers, because if accepted, TWN would be precluded from granting such MVPDs and OVDs any online distribution right.<sup>5</sup>

This letter commences a ten-day period after which we intend to file a program carriage complaint against Comcast, unless we hear from you or your representative that Comcast will meet to explore resolution of this issue without government involvement.

Sincerely,



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Markham C. Erickson  
*Counsel for The Word Network*

cc: Michael D. Hurwitz, Willkie Farr & Gallagher LLP, Counsel to Comcast Corporation

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<sup>4</sup> Applications of Comcast Corporation, General Electric Company and NBCU Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion and Order*, 26 FCC Rcd. 4238, 4361, Condition IV(B)(3) (2011).

<sup>5</sup> *Id.* at 4363, Condition IV(G)(1)(a).

# EXHIBIT 8



300 New Jersey Avenue, NW  
Suite 700  
Washington, DC 20001  
www.comcastcorporation.com

**Francis M. Buono**  
SVP & Sr. Deputy General Counsel  
Comcast Corporation

May 26, 2017

**VIA ELECTRONIC MAIL & OVERNIGHT MAIL**

Mr. Markham Erickson  
Counsel to The Word Network  
Steptoe & Johnson LLP  
1330 Connecticut Ave., NW  
Washington, DC 20036

*Re: The Word Network – Supplemental Pre-Filing Notice of Program Carriage Complaint*

Dear Mr. Erickson:

I am in receipt of your May 19 letter, which responds to my February 16 response to the February 6 letter from Kevin Adell, President and CEO of The Word Network (“Word”). In its initial letter, Word threatened to file a program carriage discrimination complaint at the FCC against Comcast. Notwithstanding the fact that your latest letter is styled as a “supplemental pre-filing notice,” nothing in this letter substantiates or legitimizes the vague and specious claims in Word’s February 6 letter. Rather, the May 19 notice letter attempts to “supplement” plainly deficient and wholly manufactured claims with simply more of the same. In all events, there continues to be no basis for a program carriage complaint or any claim that Comcast somehow violated its obligations under the *Comcast-NBCUniversal* conditions, and we strongly urge your client to reconsider pursuing this meritless action and any further unfounded claims. Should Word proceed with a regulatory complaint, Comcast fully intends to defend itself vigorously, and reserves all rights in doing so.

As with Word’s February 6 letter, the latest letter continues to assert – devoid of any relevant context such as the respective *value* offered by different networks – that Comcast treats affiliated networks “better” than Word by paying them and carrying them more broadly than Word,<sup>1</sup> and

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<sup>1</sup> As previously explained, Word’s February 6 pre-filing notice failed to provide sufficient detail as to the specific nature of Word’s potential complaint against Comcast, as the program rules require. *See* 47 C.F.R. § 76.1302(b) (“The [pre-filing] notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint.”). Word’s supplemental notice is even *more* inadequate and irresponsible on this and other levels. It is telling that, in the supplemental notice, Word makes no further reference to its initial baseless claims that (1) Comcast has some “affiliation” with Impact Network and (2) Comcast is discriminating on the basis of affiliation against Word by favoring a purportedly “similar situated” network, Oxygen – which, as we pointed



Mr. Markham Erickson

May 26, 2017

Page 2

also continues to focus on inapt comparisons between Word and the Impact Network (“Impact”), an *unaffiliated* network. We understand that Word is unhappy with Comcast’s business decision – made after significant consideration of how to best serve our customers – to increase the carriage of Impact and reduce the carriage of Word. However, Word’s views as to why Impact “is an objectively inferior network” to Word are simply not relevant here. As Comcast previously explained, Word’s disagreement with Comcast’s reasonable business judgment as to how it chooses to carry two *unaffiliated* networks plainly cannot give rise to a claim of discrimination *on the basis of affiliation* under the program carriage rules or the *Comcast-NBCUniversal* condition.<sup>2</sup>

Likewise, Word’s newly-minted allegation that Comcast sought exclusive digital distribution rights to Word programming in a November 22, 2016 meeting, thereby unlawfully demanding a financial interest in Word as a condition of carriage – a claim raised for the very first time in the May 19 letter – is equally baseless. First, Comcast representatives never made such a demand during this meeting, or in any other interactions with Word representatives. The allegation is flatly false. It would be irresponsible to make wholly unsupported and false representations to the contrary in a signed and sworn program carriage complaint before the Commission. To the contrary, the discussions between Word and Comcast last fall revolved around Word’s efforts to convince Comcast *not to reduce* carriage of Word, not efforts by Comcast to increase its rights to distribute Word in any medium.<sup>3</sup> Second, Section 616(a)(1) and its implementing regulations apply to improper demands for *ownership* interests in the complainant’s programming.<sup>4</sup> Nothing

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out, is not remotely similar to Word, is currently targeted to “young, multicultural women” and soon will be rebranding as a true crime network. In fact, the supplemental notice does not even attempt to identify *any* Comcast-affiliated network that is allegedly similarly situated to Word – a fatal omission in any wholly circumstantial program carriage discrimination claim (as this is). Stated another way, the wildly oscillating nature of Word’s various claims not only is reckless, but also underscores the fact that Word has no good-faith basis to make such claims in the first place.

<sup>2</sup> Similarly, Word’s contention that its payment to Comcast of transport fees for distribution on Comcast systems creates a basis for a discrimination claim is both irrelevant and inaccurate. First, the transport arrangement that Word has with Comcast’s separate business unit, HITS (or Headend in the Sky), is not a term of the parties’ carriage agreement. Second, this service delivers Word’s service to only a tiny fraction of Comcast systems in which Word is carried; instead, its primary benefit is delivery of Word to dozens of other, smaller, cable operators.

<sup>3</sup> The fact that the purported demand for exclusive digital rights never happened also fully extinguishes the baseless claims that Comcast somehow violated the *Comcast-NBCUniversal* conditions’ prohibitions on Comcast entering into or enforcing contracts that impede the flow of programming to online video distributors (“OVDs”) or engaging in unfair practices that harm OVDs. Beyond the fact that the claimed conduct is a fiction, these claims have several other fatal deficiencies, including that Word has long made available its programming to multiple OVDs and in fact continues to make it available for free over the Internet via its own website and app – all without interference from Comcast.

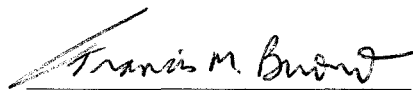
<sup>4</sup> Notably, in describing the rationale for Section 616 in its latest Video Competition Report, the Commission reiterated that “Congress was concerned that cable operators had the ability and incentive to thwart the competitive development of additional programming networks by refusing to carry unaffiliated networks or by insisting on an *ownership stake* in return for carriage.” *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd. 568, ¶ 22 n.38 (MB 2017) (emphasis added).

Mr. Markham Erickson  
May 26, 2017  
Page 3

in the text or legislative and regulatory history of Section 616(a)(1) supports such an expansive interpretation of “financial interest” to sweep in digital distribution rights.

In sum, these newfound claims are frivolous – just as were Word’s prior allegations of discrimination on the basis of affiliation – and provide no basis for a program carriage complaint or any other cause of action. As Comcast has repeatedly explained, our carriage decisions regarding Word, which we continue to distribute to millions of our customers,<sup>5</sup> are rooted in our good-faith editorial and businesses assessment of how to serve our customers and provide them with an appealing range of content choices, including Christian programming targeted to the African-American community. We strongly urge your client to reconsider its threat to utilize Commission processes to raise these meritless claims, which do not become any more meritorious simply by repetition.

Sincerely,

A handwritten signature in black ink, reading "Francis M. Buono", written over a horizontal line.

Francis M. Buono  
Senior Vice President  
Legal Regulatory Affairs &  
Senior Deputy General Counsel  
Comcast Corporation

cc: Michael D. Hurwitz, Willkie Farr & Gallagher LLP, Counsel to Comcast Corporation

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<sup>5</sup> The supplemental notice neglects to mention that Comcast continues to carry Word on our cable systems to approximately four million of our customers.

# EXHIBIT 9

PUBLIC VERSION - REDACTED



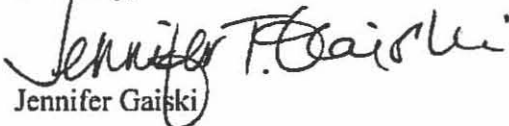
November 11, 2016

Mr. Kevin Adell  
President & CEO, The Word  
20733 W. 10 Mile Road  
Southfield, MI 48075

Dear Kevin:

Please be advised that on or after January 12, 2017, The Word will be removed from the Comcast systems on the attached list. We look forward to continuing distribution of The Word in many of our systems.

Sincerely,

  
Jennifer Gaiski

SVP, Content Acquisition  
Comcast Cable

PUBLIC VERSION - REDACTED



Comcast Cable Communications, Inc.  
1701 JFK Blvd.  
Philadelphia, PA 19103  
215-286-8763 Tel  
215-286-1085 Fax  
www.comcast.com

## Fax Transmission

Date: 11/11/16 Phone: \_\_\_\_\_  
To: Mr Kevin Adell, President & CEO Fax: 248-350-3422  
From: Jennifer Gaiski # 11, including  
Re: \_\_\_\_\_ Pages: coversheet

### CONFIDENTIALITY NOTICE

This communication is only for the use of the intended recipient and may contain information that is privileged, confidential or otherwise protected from disclosure. If you are not the intended recipient or the employee or agent responsible for delivering this communication to the intended recipient, you are hereby notified that any reading, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us via the United States Postal Service. Thank you.

## PUBLIC VERSION - REDACTED

Systems dropping The Word on or around January 12, 2017:

System	State
ALAMEDA [R]	CA
ALAMO/DANVILLE	CA
ARROYO RB	CA
BELMONT	CA
BENICIA [R]	CA
BERKELEY	CA
BRENTWOOD [R]	CA
BURLINGAME [R]	CA
CAMPBELL	CA
CASTRO VALLEY	CA
CHICO [R]	CA
CHICO-CHOW	CA
CUPERTINO [R]	CA
DALY CITY [R]	CA
DAVIS	CA
FAIRFIELD [R]	CA
FORT BRAGG	CA
FREMONT [R]	CA
FRESNO [M1]	CA
GRASS VALLEY	CA
HALF MOON BAY	CA
HAYWARD RB	CA
HEALDSBURG [R]	CA
HERCULES [FROM PINOLE]	CA
LODI [M1]	CA
LOS ALTOS [R]	CA
LOS BANOS	CA
LOS GATOS RB	CA
MERCED [R]	CA
MILPITAS RB	CA
MODESTO [R]	CA
MONTEREY [R]	CA
MOUNTAIN VIEW [R]	CA
NAPA RB	CA
NEWARK NEW [R]	CA
NOVATO	CA
OAKLAND [R]	CA
OROVILLE [R]	CA
PALO ALTO [R]	CA
PATTERSON [R]	CA
PETALUMA	CA
PINOLE	CA
PITTSBURG RB	CA
PLACERVILLE [M1]	CA
PLEASANTON	CA
RICHMOND/EL CERRITO	CA
RIO VISTA	CA
ROHNERT PARK	CA
ROSEVILLE	CA
SACRAMENTO	CA
SAN ANDREAS CALAVERAS[M1]CADT	CA
SAN FRANCISCO [R]	CA
SAN JOSE [SINGLE]	CA
SAN MATEO [R]	CA
SAN PABLO [R]	CA

## PUBLIC VERSION - REDACTED

System	State
SAN RAFAEL	CA
SANTA CLARA [R]	CA
SANTA ROSA RB	CA
SARATOGA RB	CA
SEBASTOPOL	CA
SONORA	CA
SOUTH SAN FRANCISCO [R]	CA
STOCKTON [M1]	CA
SUNNYVALE RB	CA
TRACY	CA
TRAVIS AFB [R]	CA
UKIAH	CA
UNION CITY [R]	CA
VACAVILLE [R]	CA
WALNUT CREEK [R] 2	CA
WILLITS	CA
YUBA CITY [M1]	CA
AVON [UPGRADE]	CO
BOULDER [FROM TCC] [R]	CO
COLORADO SPRINGS	CO
DENVER [R]	CO
FT COLLINS [R]	CO
GRANBY	CO
GREELEY [R]	CO
LONGMONT RB	CO
LONGMONT/LOVELAND	CO
NORTH SUBURBS [R]	CO
PUEBLO [OLD R]	CO
SOUTH SUBURBS	CO
STEAMBOAT SPRINGS	CO
SUMMIT CO.	CO
TRINIDAD	CO
BRANFORD	CT
BRISTOL/FARMINGTON	CT
HARTFORD	CT
MIDDLETOWN	CT
NORWICH	CT
PLAINVILLE	CT
SEYMOUR	CT
SHELTON	CT
VERNON	CT
WATERBURY	CT
WASHINGTON DC	DC
DOVER	DE
NEW CASTLE COUNTY	DE
REHOBOTH-PHILA	DE
REHOBOTH-SALISBURY	DE
AMESBURY	MA
AMHERST	MA
ARLINGTON	MA
ASHLAND	MA
BELLINGHAM	MA
BELMONT	MA
BERNARDSTON	MA
BEVERLY	MA
BOSTON	MA
BOXFORD	MA

## PUBLIC VERSION - REDACTED

System	State
BRAINTREE	MA
BRIDGEWATER	MA
BROCKTON	MA
BROOKLINE	MA
CAMBRIDGE	MA
DEDHAM	MA
DIGHTON	MA
DRACUT	MA
EAST BRIDGEWATER	MA
EASTON	MA
FAIRHAVEN	MA
FALL RIVER	MA
FALMOUTH	MA
FOXBOROUGH	MA
FRAMINGHAM	MA
FRANKLIN	MA
FREETOWN	MA
GARDNER	MA
GLOUCESTER	MA
GREENFIELD	MA
HAVERHILL	MA
HOLLISTON	MA
HOLYOKE	MA
HOPKINTON	MA
LANCASTER	MA
LAWRENCE	MA
LEXINGTON	MA
LINCOLN	MA
LONGMEADOW	MA
LOWELL	MA
LYNN	MA
MALDEN	MA
MANSFIELD	MA
MARBLEHEAD	MA
MARLBOROUGH	MA
MARTHA'S VINEYARD	MA
MASHPEE	MA
MAYNARD NORTH	MA
METHUEN	MA
MIDDLEBOROUGH	MA
MILFORD	MA
NAHANT	MA
NANTUCKET	MA
NEEDHAM	MA
NEW BEDFORD	MA
NEWBURYPORT	MA
NORTHAMPTON	MA
NORTON	MA
NORWOOD	MA
PALMER	MA
PEABODY	MA
PELLHAM	MA
PLYMOUTH	MA
QUINCY	MA
REHOBOTH	MA
SALEM	MA
SAUGUS	MA



## PUBLIC VERSION - REDACTED

System	State
SCITUATE	MA
SEEKONK	MA
SHELBURNE	MA
SHERBORN	MA
SOMERVILLE	MA
SPRINGFIELD	MA
TAUNTON	MA
TEWKSBURY	MA
TYNGSBORO	MA
WALTHAM	MA
WARE	MA
WAREHAM	MA
WARREN	MA
WESTFIELD	MA
WEYMOUTH	MA
WINCHENDON	MA
WOBURN	MA
WRENTHAM	MA
ACCIDENT	MD
ANNAPOLIS	MD
ANNE ARUNDEL/GAMBRILLS	MD
BALTIMORE CITY	MD
BALTIMORE COUNTY	MD
CALVERT COUNTY	MD
CAMBRIDGE-BALTIMORE	MD
CAMBRIDGE-SALISBURY	MD
CARROLL COUNTY-BALTIMORE	MD
CHARLES COUNTY/WALDORF	MD
ELKTON	MD
FREDERICK COUNTY	MD
GRANTSVILLE	MD
HANCOCK	MD
HARFORD COUNTY	MD
HOWARD COUNTY	MD
KEYSER-PITTSBURGH	MD
KEYSER-WASH	MD
MONTGOMERY MD	MD
OCEAN CITY	MD
PRINCE GEORGE'S COUNTY	MD
SALISBURY	MD
BERWICK	ME
BRUNSWICK 550	ME
BRUNSWICK 750	ME
ELIOT	ME
BLOOMINGTON	MN
BROOKLYN CENTER [NW BURB][M1]	MN
CARVER	MN
CHASKA	MN
COLUMBIA HGTS [N CENTRAL][M1]	MN
EAGAN [R] [M1][FV7]	MN
FRIDLEY	MN
JORDAN	MN
MADILIA	MN
MENDOTA [NDC] [M1]	MN
MINNEAPOLIS	MN
MONTROSE	MN
NEW PRAGUE	MN

## PUBLIC VERSION - REDACTED

System	State
NEW ULM	MN
NORTH METRO [M1]	MN
SAINT CROIX [M1][FV4]	MN
SAINT PAUL [FV9][M1]	MN
SHAKOPEE	MN
SHOREVIEW [N SUBURBS][M1][FV3]	MN
SOUTHWEST SUBURBS	MN
ST. LOUIS PARK	MN
WHITE BEAR LAKE (RAM/WAS)[M1]	MN
CASWELL-YANCEYVILLE	NC
ALLENSTOWN	NH
CANTERBURY	NH
CLAREMONT	NH
CONCORD	NH
DERRY	NH
DOVER	NH
DURHAM	NH
EPPING	NH
EXETER	NH
LONDONDERRY 860	NH
MANCHESTER	NH
NASHUA	NH
PETERBOROUGH	NH
PORTSMOUTH	NH
STRATHAM	NH
WILMOT	NH
BURLINGTON	NJ
DOVER/TOMS RIVER	NJ
GARDEN ST-CHERRY HILL-NY	NJ
GARDEN ST-CHERRY HILL-PHILA	NJ
GLOUCESTER	NJ
HILLSBOROUGH-SOMERSET	NJ
JERSEY CITY	NJ
LAMBERTVILLE	NJ
LONG BEACH ISLAND	NJ
LONG HILL	NJ
MAPLE SHADE	NJ
MEADOWLANDS	NJ
MERCER COUNTY	NJ
MIDDLESEX COUNTY	NJ
MONMOUTH	NJ
NORTHWEST	NJ
OCEAN COUNTY	NJ
PLAINFIELD	NJ
PRINCETON	NJ
SOUTH NJ SHORE AREA	NJ
TRENTON	NJ
UNION	NJ
VINELAND	NJ
ALBUQUERQUE [R]	NM
FARMINGTON	NM
GALLUP	NM
LAS CRUCES RB	NM
LOS ALAMOS	NM
SANTA FE REBUILD	NM
SILVER CITY	NM
COLUMBIANA-COLUMBIANA CO	OH

## PUBLIC VERSION - REDACTED

System	State
COLUMBIANA-MAHONING CO.	OH
EAST LIVERPOOL	OH
FLUSHING	OH
IRONDALE	OH
MEAD TWP [KEY]	OH
ST CLAIRSVILLE	OH
STEUBENVILLE	OH
CORVALLIS [REGIONAL]	OR
EAST PORTLAND [REGIONAL]	OR
EUGENE-EUGENE	OR
EUGENE-PORTLAND OR	OR
LINN COUNTY [REGIONAL]	OR
MCMINNVILLE [REGIONAL]	OR
SALEM [REGIONAL]	OR
ST HELENS [R] [REGIONAL]	OR
TUALATIN VALLEY [REGIONAL]	OR
WEST PORTLAND [REGIONAL]	OR
ADAMS	PA
ADAMS COUNTY	PA
ALIQUPPA	PA
ARMAGH	PA
BADEN	PA
BEAVER FALLS	PA
BETHEL PARK	PA
BETHEL PARK 2	PA
BLAIRSVILLE	PA
BLAIRSVILLE NRB	PA
BROOKVILLE	PA
CANONSBURG	PA
CARNEGIE	PA
CARROLL COUNTY-HLLY	PA
CASTLE SHANNON	PA
CENTRAL CITY	PA
CENTRAL/LOWER BUCKS	PA
CLARION	PA
COATESVILLE	PA
COLUMBIANA-LAWRENCE CO	PA
CORAOPOLIS	PA
DARLINGTON	PA
DELAWARE COUNTY	PA
DUNMORE	PA
GREENSBURG	PA
HANOVER (FKA ANCHOR)	PA
HARRISBURG CITY	PA
HARRISBURG SUBURBS	PA
HERSHEY	PA
HUNTINGDON-JOHNSTOWN	PA
HUNTINGDON-WASH	PA
KENNETT SQUARE	PA
KISKIMINETAS	PA
LEWISTOWN	PA
LOCK HAVEN	PA
LOWER MERION	PA
LYKENS-HARRISBURG	PA
LYKENS-WILKES	PA
MAIN LINE	PA
MCKEESPORT	PA

## PUBLIC VERSION - REDACTED

System	State
GREENE COUNTY	VA
HARRISONBURG	VA
LEXINGTON	VA
LOUDOUN COUNTY	VA
LOUISA	VA
LURAY	VA
LYNCHBURG	VA
MARTINSVILLE	VA
ORANGE	VA
PAGE COUNTY	VA
PALMYRA	VA
PETERSBURG RB	VA
PRINCE WILLIAM	VA
PULASKI	VA
RESTON	VA
RICHMOND	VA
SALEM	VA
SOUTH BOSTON	VA
SOUTH HILL	VA
SPOTSYLVANIA/STAFFORD	VA
STAUNTON	VA
TROUTVILLE	VA
WINCHESTER	VA
BENNINGTON	VT
BRATTLEBORO/STRATTON	VT
BURLINGTON	VT
MONTPELIER	VT
NEWPORT	VT
RUTLAND	VT
BELLINGHAM [FINAL DIGITAL]	WA
BREMERTON [KITSAP COUNTY REG]	WA
CENTRALIA [R]	WA
EDMONDS [FROM EVERETT]	WA
FAIRCHILD AFB	WA
GRAYS HARBOR COUNTY [R]	WA
KING COUNTY SOUTH	WA
KIRKLAND [R]	WA
LONGVIEW	WA
MARYSVILLE [R]	WA
OLYMPIA [R] [REG]	WA
SHELTON [R]	WA
SKAGIT COUNTY [R]	WA
SNOHOMISH [R][FROM EVERETT]	WA
SPOKANE [R]	WA
TACOMA [R]	WA
TACOMA SOUTH [PIERCE] [R]	WA
VANCOUVER [REGIONAL]	WA
WISHKAH	WA
MANITOWOC	WI
RIVER FALLS [M1][FV8]	WI
BLUEFIELD	WV
BLUEFIELD - BLAND CO	WV
CHESTER	WV
HUNTINGTON	WV
MARTINSBURG	WV
MORGANTOWN	WV
TAYLOR COUNTY	WV

## PUBLIC VERSION - REDACTED

System	State
MEYERSDALE	PA
MONROEVILLE	PA
MT UNION-HILLY	PA
MT UNION-JOHNSTOWN	PA
NEW CASTLE	PA
NEWPORT	PA
NICHOLSON-NEWTON	PA
NORRISTOWN	PA
OIL CITY	PA
PENN HILLS	PA
PHILADELPHIA AREA 1	PA
PHILADELPHIA AREA 2	PA
PHILADELPHIA AREA 3/4	PA
PITTSBURGH	PA
PLUM	PA
PLYMOUTH/LANSDALE	PA
POTTSTOWN	PA
PUNXSUTAWNEY-JOHNSTOWN	PA
PUNXSUTAWNEY-PITTSBURGH	PA
RADNOR	PA
REEDSVILLE	PA
RIDGWAY	PA
RIMERSBURG	PA
ROSS	PA
RURAL VALLEY	PA
SCRANTON	PA
SMETHPORT-BUFFALO	PA
SMETHPORT-JOHNSTOWN	PA
STATE COLLEGE	PA
TARENTUM	PA
TOWANDA	PA
UPPER BUCKS	PA
WASHINGTON	PA
WILLOW GROVE	PA
YORK COUNTY	PA
HOUSTON	TX
HOUSTON (TW)	TX
HEBER CITY	UT
LOGAN	UT
SALT LAKE CITY [R 2]	UT
ALEXANDRIA	VA
ALTA VISTA-GRETNA	VA
AMELIA COUNTY	VA
AMHERST	VA
ARLINGTON	VA
BLACKSBURG	VA
CHARLES CITY	VA
CHARLOTTESVILLE	VA
CHASE CITY-RALEIGH	VA
CHASE CITY-RICHMOND	VA
CHESTERFIELD VA	VA
CULPEPER	VA
DANVILLE RB	VA
EMPORIA	VA
FAUQUIER COUNTY	VA
FRONT ROYAL	VA
FRONT ROYAL NRB	VA

PUBLIC VERSION - REDACTED

System	State
WEIRTON	WV
WHEELING	WV